TAB A

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)
	)
Application by	)
Qwest Communications International, Inc.	) WC Docket No. 02-189
For Authorization To Provide	)
In-Region, InterLATA Services in the States	)
of Montana, Utah, Washington, and Wyoming	)

JOINT DECLARATION OF

JOHN F. FINNEGAN

TIMOTHY M. CONNOLLY

AND MITCHELL H. MENEZES

ON BEHALF OF AT&T CORP.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

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**JOINT DECLARATION OF JOHN F. FINNEGAN,
TIMOTHY M. CONNOLLY, AND MITCHELL H. MENEZES
ON BEHALF OF AT&T CORP.**

1. My name is John F. Finnegan. I am a Senior Policy Witness employed by

AT&T Corp. My business address is 1875 Lawrence Street, Suite 1500, Denver, Colorado,

80202.

2. I received a Bachelor of Science degree in Engineering from Rutgers College

of Engineering and an M.B.A. from the University of Denver. After graduating from Rutgers, I

spent the next two years with Combustion Engineering in Valley Forge, Pennsylvania, as a Project

Engineer. I have worked for AT&T since 1983 in a variety of engineering, quality management,

sales and marketing positions. Almost half of that time was spent leading a supplier quality

management organization.

3. In 1995, I joined AT&T's New Markets Development Organization (the

immediate predecessor to AT&T's Western Region Local Services Organization) and was one of

the first employees in the Western Region to explore the opportunities associated with providing

local exchange service in that region.[1] In 1996, I assumed my current position. In recent years, I

have concentrated my work efforts on collaborating with Qwest, competitive local exchange

carriers ("CLECs"), and state regulators on understanding and evaluating Qwest's operational

support system ("OSS"). In fact, I have been AT&T's representative in the Arizona and the

Regional Oversight Committee's ("ROC") OSS tests since their inception. I am frequently a

panelist on ROC OSS discussions, and have testified in State 271 proceedings in Colorado

Washington, North Dakota, South Dakota, Nebraska, Oregon, and New Mexico.

4. My name is Timothy M. Connolly. I am a business systems analyst. Currently,

I operate the consulting firm of C2 Technology Analysts ("C2TA). My company is located at

2005 Arbor Avenue in Belmont, California. I have degrees from Creighton University in Omaha,

Nebraska, and from the University of Illinois at Chicago.

5. In my current capacity as a business systems analyst, I serve as a consultant to

AT&T concerning OSS, third-party testing of the OSS of incumbent local exchange carriers

("ILECs"), ILEC Change Management Processes ("CMP"), incumbent-to-competitor testing

procedures, and performance measurement systems. I have consulted with AT&T on OSS

matters for more than six years.

6. Prior to starting C2TA, I worked for technical consulting companies and

partnerships that were engaged to evaluate and recommend technology platforms for

communications carriers, including incumbent OSS offerings. Several of these consulting

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[1] A summary of AT&T's current local exchange offerings in Washington, Utah, Montana, and
Wyoming, and the Qwest interfaces that AT&T uses to provide such service, is attached hereto as
Attachment 1.

assignments have involved the OSS obligations of ILECs under the Telecommunications Act of 1996 and, in particular, State and federal regulatory commission requirements for the operational readiness of OSS to meet Section 271 checklist requirements. I have testified on the OSS capabilities of incumbent carriers across the country in State and federal proceedings, including the proceedings before this Commission involving Bell Atlantic's Section 271 application for New York and Southwestern Bell's Section 271 application for Texas. Prior to becoming a consultant, I worked for AT&T for fourteen years in a variety of capacities, including management of an international systems integration business unit that developed software packages of business and network support systems for domestic and overseas customers of AT&T.

7. My name is Mitchell H. Menezes. I am a commercial attorney with AT&T Corp. My business address is 1875 Lawrence Street, Suite 15-21, Denver, Colorado, 80202.

8. I received a Bachelor of Arts degree in Natural Science and German from Lewis & Clark College in 1983. I attended the United States Officer Training School, Lackland Air Force Base, San Antonio, Texas, and was commissioned as a Second Lieutenant in the Air Force in 1985. I served in the Air Force until 1990 in a communications group, working in budget and planning and later in a contract management role. I received a Juris Doctor degree in 1991 from the Catholic University of America, Columbus School of Law, in Washington, D.C. I was employed as an attorney at Ireland, Stapleton, Prior & Pascoe, P.C., a Denver law firm, from 1991 until the middle of 1996, where I worked primarily on business transactional matters, including mergers, asset purchase and sales, and commercial real estate transactions.

DECLARATION OF JOHN F. FINNEGAN,
TIMOTHY M. CONNOLLY, AND MITCHELL H. MENEZES   *REDACTED*
FCC WC DOCKET NO. 02-189   *FOR PUBLIC INSPECTION*

9. From 1996 until the present, I have been employed by AT&T in the Law and

Government Affairs department, negotiating contract arrangements on behalf of AT&T. Since

September 2001, I have participated in the negotiations between CLECs and Qwest for the

redesign of Qwest's change management process ("CMP"). In that capacity, I have become

familiar with Qwest's CMP plan as it is being redesigned and implemented. I have also attended

redesign meetings since September 2001 and have assisted in negotiating and drafting the

language reflecting the processes and obligations contained in Qwest's CMP document.

I.   PURPOSE AND SUMMARY OF DECLARATION

10. The purpose of this Declaration is to assess whether Qwest provides

nondiscriminatory access to its OSS as required by the Telecommunications Act of 1996 ("the

1996 Act"), including the competitive checklist set forth in Section 271 of the Act. For the

reasons stated below, Qwest has not met its OSS obligations, notwithstanding its claims of

compliance in its Application.[2]

11. In its 1996 *Local Competition Order,* the Commission found that the

"massive operations support systems employed by incumbent local exchange carriers ("ILECs"),

and the information such systems maintain and update to administer telecommunications networks

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[2] *See* Brief of Qwest Communications International Inc. In Support of Consolidated Application for Authority To Provide In-Region, InterLATA Services in Montana, Utah, Washington, Wyoming, and North Dakota, dated July 12, 2002 ("Application") at 3, 114; Declaration of Lynn M. V. Notarianni and Christie L. Doherty ("OSS Decl."), ¶ 4. In the course of this Declaration, we will also respond to the Declaration of Dana L. Filip regarding change management ("Filip Decl.").

and services, represent a significant potential barrier to entry."[3] The Commission has repeatedly

recognized that, without non-discriminatory access to the OSS used by ILECs, AT&T and other

CLECs would be effectively prevented from providing truly competitive local telecommunications

service. For example, in its recent *Georgia/Louisiana 271 Order*, the Commission stated:

> The Commission consistently has found that nondiscriminatory
> access to OSS is a prerequisite to the development of meaningful
> local competition. For example, new entrants must have access to
> the functions performed by the incumbent's OSS in order to
> formulate and place orders for network elements or resale services,
> to install service to their customers, to maintain and repair network
> facilities, and to bill customers. The Commission has determined
> that without nondiscriminatory access to the BOC's OSS, a
> competing carrier "will be severely disadvantaged, if not precluded
> altogether, from fairly competing" in the local exchange market.[4]

Systems that are slow to respond, or that are unreliable or inaccurate, would defeat a CLEC's

best efforts to ensure that its customers receive the services they requested on a timely,

competitive basis. No carrier can serve customers effectively without well-designed, properly

implemented, operationally stable, robust, and reliable OSS.

> Accordingly, the Commission has held that:

> Section 271 requires the Commission to determine whether
> a BOC offers nondiscriminatory access to OSS functions. . . .
> [A]ccess to OSS functions falls squarely within an incumbent

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[3] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*,
FCC CC Docket Nos. 96-98 and 95-185, First Report and Order, released August 8, 1996
("*Local Competition Order*"), ¶ 516.

[4] *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth
Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana*,
CC Docket No. 02-35, Memorandum Opinion and Order released May 15, 2002
("*Georgia/Louisiana 271 Order*"), App. D, ¶ 25 (footnotes and citations omitted). *See also
Georgia/Louisiana 271 Order*, ¶ 102.

LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable. The Commission must therefore examine a BOC's OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv). In addition, the Commission has also concluded that the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well. Consistent with prior orders, the Commission examines a BOC's performance directly under checklist items 2 and 14, as well as other checklist items.[5]

12.   Under the Commission's rulings, for those OSS functions that the BOC provides to CLECs that are analogous to functions that the BOC provides to itself in its own retail operations, the statutory mandate of "nondiscriminatory access" requires a BOC such as Qwest to provide access to CLECs that is "equivalent in terms of quality, accuracy, and timeliness," so that CLECs can perform those functions in "substantially the same time and manner" as the BOC.[6] For those OSS functions that have no retail analogue, the BOC must demonstrate that the access it provides to CLECs would offer an efficient carrier a "meaningful opportunity to compete."[7] The latter standard is not a weaker standard than the "substantially the

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[5] *Id.*, App. D, ¶ 26 (citations omitted). *See also Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York,* CC Docket No. 99-295, Memorandum Opinion and Order released December 22, 1999, ¶ 84 & n.203 ("*New York 271 Order*") (citations omitted).

[6] *Georgia/Louisiana 271 Order,* App. D, ¶ 27; *New York 271 Order,* ¶¶ 44, 85; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Service in Michigan,* FCC CC Docket No. 97-137, Memorandum Opinion and Order, released August 19, 1997 ("*Michigan 271 Order*"), ¶¶ 130, 139-143.

[7] *Georgia/Louisiana 271 Order,* App. D, ¶ 28; *New York 271 Order,* ¶¶ 44, 86.

same time and manner" standard, but is "intended to be a proxy for whether access is being

provided in substantially the same time and manner and, thus, nondiscriminatory."[8] The BOC

must satisfy these standards for *each* of the modes of entry presented by the 1996 Act (*i.e.*,

interconnection, unbundled network elements, and resale).[9]

13.   The Commission has applied a two-part test to determine whether a BOC

such as Qwest meets this parity access standard:

> First, the Commission determines "whether the BOC has deployed
> the necessary systems and personnel to provide sufficient access to
> each of the necessary OSS functions and whether the BOC is
> adequately assisting competing carriers to understand how to
> implement and use all the OSS functions available to them." The
> Commission next assesses "whether the OSS functions that the
> BOC has deployed are operationally ready, as a practical matter."[10]

The second part of this inquiry (*i.e.*, "operational readiness") requires an assessment of the

commercial readiness of a BOC's OSS to handle current and foreseeable demand.[11] The most

probative evidence that OSS functions are operationally ready is actual commercial usage. Absent

data on commercial usage, the Commission will consider the results of testing.[12]

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[8] *New York 271 Order*, ¶ 45. *See also Michigan 271 Order*, ¶ 143 ("We require, quite simply, that the BOC provide the same access to competing carriers that it provides to itself").

[9] *Georgia/Louisiana 271 Order*, App. D, ¶ 27; *New York 271 Order*, ¶ 85, *Michigan 271 Order*, ¶ 133.

[10] *Georgia/Louisiana 271 Order*, App. D, ¶ 29 (quoting *New York 271 Order*, ¶ 88).

[11] *Georgia/Louisiana 271 Order*, App. D, ¶ 31; *New York 271 Order*, ¶ 89; *South Carolina 271 Order*, ¶ 97; *Michigan 271 Order*, ¶ 138.

[12] *Georgia/Louisiana 271 Order*, App. D, ¶ 31; *New York 271 Order*, ¶ 89.

14.   Under these standards, Qwest is not in compliance with its OSS obligations. Qwest relies heavily on the ROC OSS conducted by KPMG Consulting ("KPMG") as support for its claim that it is providing nondiscriminatory access – even describing KPMG's test as "determinative of OSS-related issues." *See, e.g.,* Application at 118; OSS Decl., ¶ 33. Qwest's reliance on KPMG's test, however, is misplaced. In the first place, as previously described (and as Qwest admits), the Commission has consistently held that the most probative evidence that a BOC is providing parity of access to its OSS is actual commercial usage – not testing. *See* Application at 115. As demonstrated herein and in the other evidence included in AT&T's Comments, actual commercial usage shows that Qwest fails to provide nondiscriminatory access.

15.   Moreover, KPMG's Final Report on its test expressly states that the report does not constitute a determination or analysis concerning Qwest's compliance with its statutory obligation of nondiscriminatory access. Instead, the KPMG report assumes that this determination will be made by the appropriate regulatory bodies.[13] In fact, many of the

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[13] For example, KPMG's Final Report expresses KPMG's expectation "that each of the participating State Commissions will review this report in forming its own assessment of Qwest's compliance with the requirements of the Act." KPMG Final Report (Application, Attachment 5, Appendix F) at 5. KPMG also states that its audience would include "[r]egulators who will utilize this document during formal regulatory evaluations of Qwest's Operating Support Systems (OSS), including State Commissions, the Federal Communications Commission (FCC), and the Department of Justice (DOJ)." *Id.*   KPMG further acknowledged that its evaluation was not a determination of the extent of Qwest's compliance with its OSS obligations for purposes of Section 271, when it encouraged regulators to examine Qwest's performance for all "Diagnostic" performance indicator definitions ("PIDs") (*i.e.,* PIDs for which KPMG had collected data without determining whether Qwest's performance was adequate) "and to determine whether the level of service delivered to the [pseudo-CLEC] during the Qwest OSS Evaluation is consistent with commercial experience, *and is acceptable for the purposes of 271 approval.*" *Id.* at 13 (emphasis added). *See also* transcript of proceedings held June 10, 2002, in Colorado PUC Docket No. 02-260T ("CPUC June 10 transcript") at 137-138 (testimony of Michael Weeks,

Evaluation Criteria that KPMG applied in the test (such as its criteria regarding flow-through)

were categorized as "Diagnostic" and simply involved the collection and calculation of data by

KPMG without any determination by KPMG of the adequacy, or the competitive impact on

CLECs, of Qwest's performance. KPMG Final Report at 12 (§ 6.0).

16. In any event, the reliability and completeness of the results of the KPMG test

are highly suspect. The findings of KPMG were based – at least in part – on information and data

that KPMG obtained from CLECs who were receiving preferential treatment from Qwest.

Although KPMG employed a pseudo-CLEC for much of its testing, it also solicited the

participation of CLECs for certain aspects of the test.[14] As described in AT&T's Comments,

Qwest has entered into a number of agreements with CLECs (which Qwest did not file with the

regulatory authorities) under which Qwest provided those CLECs with special treatment and

benefits that other CLECs did not receive. Because at least some of the CLECs participating in

the third-party test to complement the pseudo-CLEC formation entered into such secret

agreements, the results of the test likely overstate Qwest's performance to the extent that those

results are based on information from these CLECs.

KPMG) ("Whether it's discriminatory or not I will leave to the folks who know what the precise definition of that is"). Finally, in June 20, 2002 meetings with the Commission, the Department of Justice, and other interested parties regarding the ROC test, KPMG stated that, although it still believed at the time it filed its Final Report that additional testing of Qwest's OSS should be performed with respect to certain problems, it was unable to perform the retesting because it was required to submit its Final Report by May 28, 2002.

[14] *See, e.g.,* KPMG Final Report at 11 (§ 5.6).

17.   KPMG has acknowledged that some of the findings and conclusions in its

Final Report were based, in whole or in part, on representations, information, or data obtained

from CLECs that made secret agreements with Qwest. In a report issued May 7, 2002, KPMG

listed specific tests on which it had relied, either substantially or in part, on input from three

CLECs who had made such agreements. These tests covered every OSS function, from pre-

ordering to maintenance and repair.[15] On June 11, 2002, KPMG issued an updated report,

acknowledging that it had not audited the data that it had obtained from the three CLECs for

accuracy and completeness. KPMG also acknowledged in its updated report that it had not

attempted "to investigate whether or not the information provided by one of the participating

CLECs was consistent with information held by other CLECs."[16] KPMG has subsequently

admitted that it has not reviewed any of the unfiled agreements.[17] Thus, KPMG performed its

analysis with no understanding of the terms of the agreements or their possible impact on the test

results.

18.   On June 17, 2002, AT&T requested that KPMG review the unfiled

agreements and analyze what impact those agreements may have had on the results and

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[15] *See* KPMG report dated May 7, 2002 (attached hereto as Attachment 2). KPMG stated that it was making "no assertion as to the accuracy or completeness of the information provided by the three CLECs" in question. *Id.*

[16] Updated KPMG report dated June 11, 2002 (attached hereto as Attachment 3). However, in proceedings before the Colorado PUC, KPMG acknowledged that in some of the tests where it had placed "substantial reliance "on input from three CLECs that made secret agreements with Qwest, KPMG's reliance on these CLECs was "100 percent." CPUC June 10 transcript at 176-177.

[17] CPUC June 10 transcript at 178, 200.

information it obtained from the CLECs with such agreements. AT&T attached to its request the

recent recommendation of the staff of the Arizona Corporation Commission that the ACC fine

Qwest over $100,000 for its legal violations in failing to file the agreements (the parties to which

were identified in the ACC Staff's recommendation). However, after discussions with the ROC

Steering Committee, KPMG replied that it saw no reason for further analysis of the issue. AT&T

then appealed to the ROC Executive Committee, which denied the appeal on June 27, 2002.[18] As

one of the factors in its decision, the Executive Committee stated that "the publicly available

information provides parties with a sufficient record to make whatever advocacy arguments they

deem appropriate."[19] In view of the refusal of KPMG or the ROC Executive Committee to

investigate the actual extent to which the results of the KPMG test were affected by the

participation of CLECs who received preferential treatment under their secret agreements with

Qwest, the findings of the test cannot be considered reliable to the extent that KPMG concluded

that Qwest has satisfied its evaluation criteria.

19.   Even leaving aside the likelihood that they overstate Qwest's performance,

however, the results of the KPMG testing undermine, rather than support, Qwest's claim that it

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[18] Copies of the relevant correspondence regarding AT&T's request to KPMG, and AT&T's appeal to the ROC Executive Committee, are attached hereto as Attachments 4 and 5, respectively.

[19] Executive Committee Decision on Impasse Appeal Regarding KPMG Consulting's Further Evaluation of CLECs with Unfiled Agreements, dated June 28, 2002 (attached hereto as Attachment 6).

meets the requirements of Section 271. KPMG's Final Report still finds numerous deficiencies in

Qwest's OSS in critically important areas, as described below.[20]

20.   Indeed, the facts, including the KPMG Report, show that parity of access for

OSS does not currently exist. First, as described in Part II below, Qwest cannot show that its

change management process complies with Section 271, because it cannot demonstrate a "pattern

of compliance over time" with the CMP, as the Commission requires. Qwest's current

"redesigned" change management process is still only in the final stages of completion, and many

of its critical provisions have been in effect for only a short time. Thus, as KPMG found in its

testing, there is insufficient evidence to support a finding that Qwest has complied with the CMP.

21.   Furthermore, even leaving aside its inability to show a pattern of compliance

with the CMP, Qwest's CMP is inadequate because Qwest has failed to establish a stable testing

environment for CLECs that mirrors, and is separate from, the production environment. As

KPMG found in its testing, both of the test environments on which Qwest relies – the

"Interoperability Environment" and the Stand-Alone Test Environment ("SATE") – are seriously

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[20] KPMG has repeatedly emphasized that its test criteria are not all of equal importance, and that regulators should not engage in a simple "numbers game" of counting criteria that were satisfied as opposed to criteria that were not satisfied. *See* KPMG Final Report at 12 (§ 6.1); CPUC June 10 transcript at 180-181. Nonetheless, Qwest asserts that it "satisfied 645 of the 685 relevant [evaluation] criteria" in the test that were non-diagnostic and "did not satisfy only 11 (1.6%)." Application at 117. Even a finding by KPMG that Qwest's OSS "satisfied" a particular test criterion did not mean that Qwest was providing parity of access in that area. KPMG did not determine whether, as to every criteria used in the test, Qwest provided the same performance to the CLECs as it did to its own retail operations. For some test criteria, KPMG simply reviewed the "adequacy" of Qwest's performance towards the CLECs without examining Qwest's performance in its retail operations. In any case, the parity requirement of the 1996 Act is not a grading system that evaluates the percentage of criteria that one "satisfied"; in effect, it is a pass-

defective. For example, Interoperability Environment is not separated from the production environment. SATE, which was created by Qwest in obvious recognition of the numerous deficiencies of the Interoperability Environment, fails to mirror the production environment in numerous respects. Moreover, SATE is not a "stable" testing environment, because Qwest does not "freeze" the test and implementation versions of a release so that changes to one cannot be made without making the same changes to the other.

22.   Second, as described in Part III, Qwest fails to provide CLECs with interfaces that provide CLECs with the same access to OSS that Qwest has in its retail operations. With respect to pre-ordering, for example, Qwest does not provide CLECs with the same degree of access to loop qualification information, or the same ability to perform multi-loop testing in pre-ordering, that is available to Qwest itself. Nor has Qwest shown that it has enabled CLECs to integrate its EDI pre-ordering and ordering interfaces, or integrate the EDI pre-ordering interface with their own internal systems, fully and successfully.

23.   Qwest also fails to provide CLECs with nondiscriminatory access to ordering and provisioning functions. Nearly one-third of orders submitted by CLECs are rejected. With respect to those orders that are not rejected, Qwest places excessive reliance on the manual processing of CLEC orders, denying CLECs the same fully automated ordering capabilities of its own retail operations. In addition, as KPMG noted in its Final Report, Qwest has committed a high rate of errors in manually processing orders. Together, these deficiencies adversely affect the

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fail system, requiring the BOC to provide parity of access to *all* aspects of its OSS. Either the BOC is providing parity in all respects, or it is not. And, as described below, Qwest is not.

CLECs' ability to compete by delaying the return of order status notices and the provisioning of service to CLEC customers, while increasing the likelihood of errors in the provisioning of CLEC orders.

24.   In addition to its unreasonably high rates of order rejections, manual processing, and manual errors, Qwest denies parity of access to ordering and provisioning functions by failing to provide timely, complete, and accurate status notices to CLECs. As KPMG found in its report, Qwest does not consistently provide CLECs with jeopardy notices whenever Qwest may be unable to provide the requested service on the due date. Qwest also has denied parity of access by: (1) providing status notices that are either out of sequence (sending a confirmation notice, followed by a rejection notice) or inaccurate; (2) failing to provision UNE-P and resale services to CLECs within the same time period as in Qwest's retail operations, (3) failing to adequately provision orders for dark fiber or enhanced extended loops ("EELs"); and (4) impeding the CLECs' ability to submit further orders for migrating customers by taking an unreasonably long time to update customer service records.

25.   Qwest also does not provide nondiscriminatory access to maintenance and repair functions. Qwest's own reported data, for example, show that repeat trouble report rates are higher for CLECs' customers than for its own retail customers. As KPMG found in its test, Qwest has also failed to show that it performs repairs for CLECs in a satisfactory manner.

26.   Finally, Qwest fails to provide parity of access to billing functions. Contrary to the Commission's requirements, Qwest does not provide CLECs with readable, auditable, and verifiable wholesale bills. Qwest's own commercial data show that the bills that it provides to

CLECs fail to meet the nondiscrimination requirements of Section 271 – and its explanations for the discrepancies do not withstand scrutiny. Moreover, Qwest has not established that it provides accurate and complete daily usage files ("DUFs"). Qwest's inability to pass KPMG's test for the accuracy of its DUFs *five different times* indicates serious problems with its billing systems and the monitoring of those systems.

II. QWEST'S "REDESIGNED" CHANGE MANAGEMENT PROCESS DOES NOT MEET THE COMMISSION'S CRITERIA FOR COMPLIANCE WITH SECTION 271.

27. Even if, as designed, a BOC's OSS would provide nondiscriminatory access (and, as described below, Qwest's OSS are not so designed), they cannot do so in actual operation unless the BOC provides CLECs with the assistance necessary to use the OSS successfully. OSS are, by their nature, complex. Thus, it is essential that the BOC provide — and adhere to — a change management process that provides an effective way for implementing changes to the OSS without disrupting the CLEC's operations.

28. Like other technology, a BOC's OSS are dynamic and constantly changing. Even relatively modest changes by a BOC to its OSS could result in rejection of CLEC orders, unless the CLEC is provided with advance notice, consultation, and documentation. Similarly, CLECs must have a procedure that gives them an effective opportunity to obtain modifications or corrections to the OSS. As part of that change management process, CLECs need access to a stable testing environment that will enable them to determine, prior to actual implementation of a change, whether their systems will interact smoothly and effectively with the BOC's OSS as modified when they submit transactions in commercial production.

29.   The Commission, recognizing these facts, has held that a BOC can meet its OSS obligations only if it is "adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." *Michigan 271 Order*, ¶ 136. "By showing that it adequately assists competing carriers to use available OSS functions, a BOC provides evidence that it offers an efficient competitor a meaningful opportunity to compete." *Texas 271 Order*, ¶ 106. In evaluating whether a Section 271 applicant provides CLECs with a meaningful opportunity to compete, the Commission "will give substantial consideration to the existence of an adequate change management process and evidence *that the BOC has adhered to this process over time.*" *Georgia/Louisiana 271 Order*, App. D, ¶ 40; *New York 271 Order*, ¶ 102 (emphasis added). Qwest, however, has neither fully implemented nor followed an effective change management procedure. Nor has Qwest implemented a stable test environment for CLECs.

A.   Qwest Has Not Fully Implemented, or Established a Pattern of Compliance With, Its "Redesigned" Change Management Process.

30.   The Commission has stated that the absence of an effective change management process can deny CLECs a meaningful opportunity to compete:

> Without a change management process in place, a BOC can impose
> substantial costs on competing carriers simply by making changes
> to its systems and interfaces without providing adequate testing
> opportunities and accurate and timely notice and documentation of
> the changes. Change management problems can impair a
> competing carrier's ability to obtain nondiscriminatory access to
> UNEs, and hence a BOC's compliance with section 271(2)(B)(ii).[21]

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[21] *Georgia/Louisiana 271 Order*, App. D, ¶ 41; *New York 271 Order*, ¶ 103; *Texas 271 Order*, ¶ 106.

Even if an otherwise adequate change management process is in place, a BOC can still impose

substantial costs and hardships on CLECs simply by failing to adhere to that process.

31. In reviewing a BOC's change management plan, the Commission therefore

uses a two-step analysis. First, the Commission assesses whether the plan is adequate. In making

this determination, the Commission assesses whether the evidence demonstrates:

> (1) that information relating to the change management process is
> clearly organized and readily accessible to competing carriers;
>
> (2) that competing carriers had substantial input in the design and
> continued operation of the change management process;
>
> (3) that the change management plan defines a procedure for the
> timely resolution of change management disputes;
>
> (4) the availability of a stable testing environment that mirrors
> production; and
>
> (5) the efficacy of the documentation the BOC makes available for
> the purpose of building an electronic gateway.[22]

After determining whether the BOC's change management process is adequate, the Commission

evaluates "whether the BOC has established a pattern of compliance with the plan."

Georgia/Louisiana 271 Order, App. D, ¶ 42.

32. Qwest's CMP does not meet these requirements. The "redesigned" CMP is

only now in the final stages of completion – and Qwest cannot establish that it has adhered to this

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[22] *Georgia/Louisiana 271 Order,* App. D, ¶ 41; *In the Matter of Verizon Pennsylvania Inc.,
Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon
Select Services Inc. for Authorization To Provide In-Region, InterLATA Services In
Pennsylvania,* CC Docket No. 01-138, Memorandum Opinion and Order released September 19,
2001 *("Pennsylvania 271 Order"),* App. C, ¶ 42; *Texas 271 Order,* ¶ 108.

process over time. In addition, as discussed below in Part II-B, Qwest's test environments are inadequate.

33.   Qwest suggests that it has had a CMP in place since 1999, when it established a "forum for managing changes" known as the "Co-Provider Industry Change Management Process" ("CICMP"). Filip Decl., ¶ 4 & n.5. That process, however, was patently inadequate to meet the needs of CLECs. The third-party testing by KPMG (in the ROC test) and Cap Gemini Ernst & Young (in its Arizona test of Qwest's OSS) found, and the CLECs' evidence in State Section 271 proceedings demonstrated, that the CICMP suffered from numerous deficiencies. These deficiencies included Qwest's failure to provide OSS documentation sufficiently in advance of releases, excessively long times for implementation of change requests, and Qwest's failure to adhere to the practices and procedures documented in its CICMP documentation.[23]

34.   Obviously recognizing the flaws in the CICMP, Qwest requested in June 2001 that the CLECs agree to participate in a process to "redesign" the CICMP – which is now known as the Change Management Process ("CMP").[24] The "redesign" process began in July 2001, and continues today. Qwest and the CLECs have met approximately four days each month

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[23] *See, e.g.,* Cap Gemini Incident Work Orders 1076 and 1078 (attached hereto as Attachment 7), which were issued in connection with Cap Gemini's third-party testing of Qwest's OSS in Arizona.

[24] Qwest effectively admits the inadequacy of the CICMP in its Application, stating that it undertook the "redesign" of the CICMP "in part in response to issues that arose in the 271 workshops and in the third party test." Filip Decl., ¶ 9. In fact, Qwest makes clear that it is not relying on the CICMP for purposes of its Application. Application at 143 n.61. *See also id.* at

DECLARATION OF JOHN F. FINNEGAN,
TIMOTHY M. CONNOLLY, AND MITCHELL H. MENEZES   *REDACTED*
FCC WC DOCKET NO. 02-189   *FOR PUBLIC INSPECTION*

to negotiate the provisions of the CMP, and the language to reflect those processes. As a starting point in negotiations, the parties used a draft CMP document prepared by the Ordering and Billing Forum (OBF Issue 2233). As changes to the CMP have been agreed to, they have been incorporated into the draft document (known as "Master Red-Lined CLEC-Qwest CMP Re-Design Framework Interim Draft," commonly known as the "CMP Master Redline" document). *See* Filip Decl., Exh. DLF-CMP-3.

35. The "redesign" discussions have involved numerous issues. Qwest has agreed to implement changes to the CMP as they are agreed to. Similarly, the parties have agreed to maintain the CMP Master Redline document in a redline form, even as it is updated to reflect further changes, in order to make clear that it remains a draft – and is therefore not complete – until the redesign discussions are complete.

36. Although much has been accomplished in the "redesign" sessions, the redesigned CMP is only now in the final stages of completion. Although the significant provisions of the CMP have been agreed to, a number of those provisions were only recently agreed to and implemented. The CMP redesign discussions will continue into August 2002 before negotiations are complete and the CMP Master Redline document is finalized.[25]

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153 n.66 (stating that CICMP "has been superseded by the redesigned process," and that Qwest is therefore providing no evidence regarding Qwest's pattern of compliance with the CICMP).

[25]CLECs and Qwest are working to close the issues remaining in the Gap Analysis, which is a table of unresolved issues in the CMP redesign process. Negotiations over the Gap Analysis are still continuing, as the CLECs and Qwest go through the process of "cleaning up" the CMP Master Redline document to ensure that it is clear and internally consistent. In addition, in recent months the parties have re-opened discussions regarding procedures for changes to Qwest's Stand-Alone Test Environment ("SATE"). In a meeting held on July 26, 2002, Qwest agreed that

37.   Given the modifications that are still being made in the CMP Master Redline during the "redesign" process, Qwest cannot show that its CMP is fully reflected in a single document, as the Commission has required. Thus, Qwest's CMP does not yet meet the Commission's requirement that "information relating to the change management process is clearly organized and readily accessible to competing carriers."

38.   More importantly, because significant issues were only recently resolved in the CMP "redesign' process,[26] Qwest cannot establish that it has "adhered to this process over time," or "demonstrated a pattern of compliance" with the CMP, as the Commission has required. The adherence of an RBOC to a change management process cannot reasonably be determined by a "piecemeal" approach, but on an end-to-end basis that determines the RBOC's compliance only after the CMP is fully complete and has been fully implemented. In previous Section 271 proceedings where the Commission has found the RBOC to have shown a pattern of compliance

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beginning with IMA Release 12.0, it would include in SATE all changes that it makes in the production environment through the new releases that it implements, going forward (in contrast to Qwest's previous policy, which required CLECs to submit change requests asking that particular changes in a production release also be implemented in SATE and then prioritize such requests). However, Qwest did not agree to alter its policy that CLECs must submit change requests for the inclusion of additional products and features in SATE, despite the CLECs' position that, as a matter of policy, Qwest should include in SATE all of the products and features that it offers in the production environment.

[26] The most recent issues of significance that were resolved by Qwest and the CLECs in the CMP redesign process were: (1) the production support process for process-related problems; and (2) the voting process under the CMP. These issues were resolved on June 17-18, 2002, and July 10, 2002, respectively. *See* Filip Decl. ¶ 10 & n.16. Qwest acknowledges that it has still not implemented "one component" of the production support process, and makes no claim that it has implemented the agreed-to voting process. *Id.* ¶¶ 10 & n.16, 91. In any event, insufficient time has passed since the parties agreed to these processes to determine whether Qwest has adhered to them.

with its CMP, the CMP was complete, in effect, and in place well before the application was

filed.[27] Qwest's CMP is not.

39. Even if the Commission were to determine that Qwest's "Redesigned" CMP

is complete in all material respects, Qwest cannot show that it has established a pattern of

compliance, because its provisions are too recent. Qwest has expressly disavowed any reliance on

the CICMP to establish a pattern of compliance. *See* Application at 153 n.66; *see also id.* at 143

n.61. Significant provisions of the "Redesigned" CMP, however, are so new that Qwest's

compliance with them cannot be demonstrated. For example:

- As previously stated, Qwest and the CLECs agreed to the voting process for
  the CMP only on July 10, 2002. Qwest has offered no evidence that it has
  actually implemented this process. Filip Decl., ¶ 10 n.16.

- Only on June 17-18, 2002, did Qwest and the CLECs agree to manual
  workaround procedures under the CMP. Qwest acknowledges that it has still
  not implemented "one component" of these procedures (a new process for
  escalating troubles). *Id.,* ¶¶ 10 n.16, 91, 139 n.148.

- The exception process (under which a CLEC or Qwest may request a deviation
  from the CMP), and the process whereby CLECs may request postponement
  of product/process changes, were agreed to only on June 5 and 6, 2002. In its
  Final Report, KPMG cited the absence of agreement to these processes at the
  close of the test as significant reasons for its inability to conclude that the CMP
  was in place and fully implemented.[28]

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[27] *See Georgia/Louisiana Order,* ¶ 180 n.671 (BellSouth's current Change Control Process
became effective in August 2000, or 18 months before it filed the Georgia/Louisiana 271
application approved by the Commission); *Texas 271 Order,* ¶ 110 (SWBT's current CMP
became effective in September 2000, or seven months before SWBT filed its application for
Section 271 approval for Texas approved by the Commission); *Bell Atlantic New York 271
Order,* ¶ 104 (Bell Atlantic's CMP was adopted in May 1998, 16 months before the filing of Bell
Atlantic's 271 application).

[28] *See* KPMG Final Report at 536, 540-541 (Evaluation Criteria 23-2-2, 23-2-8).

- Similarly, the parties only recently reached agreement on a special change request process ("SCRP"), which enables a CLEC (or Qwest) to ensure that a change request will be included in a future release (by funding the development and implementation of a change) when the change request has not been ranked high enough in prioritization for inclusion in the next change release. *See id.*, ¶ 113.

- The current timeframes for notification to CLECs of interface releases became effective only on April 4, 2002. *See id.*, ¶¶ 144 & n.154, 159. These timeframes are one of the core features of the CMP, since Qwest's failure to comply with them will produce the very impairment of the CLECs' ability to submit orders successfully that the timeframes are intended to prevent.

- Qwest's "improved" procedures for tracking and issuing systems notifications also took effect only on April 1. Application at 156 n.70; Filip Decl., ¶ 163. A preliminary process in the CMP governing Qwest-initiated changes to products or processes also became effective only on April 1, 2002, and a revised process only on April 16, 2002. Filip Decl., ¶ 144. *See also id.*, ¶¶ 33-39, 153.

- The provisions of the CMP regarding notification intervals for planned outages were implemented only in February 2002. *See id.*, ¶¶ 144, 168.

40.   Qwest's assertion that it has "developed a strong record of compliance" with the CMP is thus flatly wrong. *See* Application at 153; *see also* Filip Decl., ¶ 143. Many key provisions of the redesigned CMP – and, necessarily, the redesigned CMP as a whole – have been in effect for only a short time. Thus, Qwest cannot show that it has complied over time with the CMP as it now exists.

41.   Qwest's own discussion of the compliance issue reflects the fact that the "redesigned" CMP is still in its infancy. Qwest asserts that it has complied with a series of "milestones" with respect to its IMA 10.0 release, including the provision of technical specifications and testing. However, at the time of its Application, no major release – including IMA 10.0 -- had been implemented, from the submission of a change request to implementation of

the release, pursuant to the currently agreed-to procedures of the Redesigned CMP.[29] That

deficiency is due entirely to Qwest, which (as described below) prevented KPMG from

performing an "end-to-end" test of its compliance with the CMP in connection with a major

release. In so doing, Qwest ignored the warning of the Common Carrier Bureau three years ago

that it was "critical" that Qwest allow an independent evaluator to conduct "a review of the

BOC's ability to implement at least one significant software release."[30]

42.   Qwest attempts to show its compliance with the Redesigned CMP by

describing the percentages of "milestones established in the CMP Framework." *See* Application at

154-156; Filip Decl., ¶¶ 143-144, 151-153. Qwest's reliance on its "milestones," however, is

misplaced and purely self-serving.

43.   Based on Qwest's limited description, the "milestones" are every step or

action that Qwest takes (or is required to take) during the CMP. Although these steps are

described in the CMP Master Redline document, they are not performance measurements that

Qwest includes in its reported monthly performance data. Instead, the data for these "milestones"

are compiled by the Qwest project managers who report to Qwest's Director of Change

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[29] For example, although IMA Release 10.0 was implemented on or about June 16, 2002, the agreed-upon procedures of the redesigned CMP regarding prioritization of changes to be introduced and collaboration of Qwest and the CLECs regarding the content of releases were not negotiated in time to be used for Release 10.0. *See* KPMG Final Report at 530-531 (Evaluation Criterion 23-1-8) (noting that, due to the test schedule, "KPMG was not able to observe the prioritization of a major software release in accordance with the documented process").

[30] Letter from Lawrence E. Strickling (Chief, Common Carrier Bureau) to Nancy E. Lubamersky (US WEST), dated September 27, 1999 (attached hereto as Attachment 8).

Management. This merely shows self-reporting of the Qwest CMP group's adherence to its own duties.

44.   Although some of the "milestones" described by Qwest involve matters that are at the core of the CMP (such as timetables for notification of changes and provision of release documentation), many of the "milestones" are tasks that are purely administrative or ministerial in nature. For example, according to Qwest, the "milestones" include such ministerial matters as: (1) whether Qwest holds regular CMP meetings; (2) whether Qwest sends an acknowledgment to the originator of a change request ("CR"); (3) whether Qwest posts CRs to its website; (4) whether Qwest holds a meeting to clarify the CLECs' CRs; (5) whether Qwest posts its initial response to a CLEC CR to its website; (5) "presenting CRs"; (6) whether Qwest provides a final response to a CLEC CR; (7) whether Qwest posts final responses to its CMP website; (7) whether Qwest conducts a walkthrough before implementing a release; (8) whether Qwest sends an acknowledgment of the receipt of a request for escalation to the CLECs; and (9) whether Qwest issues a notice to CLECs that a request for escalation has been submitted. *See, e.g.,* Filip Decl., ¶¶ 151-152, 159, 169.[31]

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[31] The ministerial nature of many of Qwest's "milestones" was made clear in the testimony of Qwest's Director of Change Management last February regarding the "milestones" governing Qwest's receipt of a change request:

> The milestones that we track – the first one is, we track the number of CRs having acknowledgments sent. And that's simply to acknowledge receipt of the CR. We've got obligations around the timeliness of the posting of the CR to the web. So that's the second one. The third one is, we have an obligation to contact the CLEC who originated the CR. We have an obligation to have a clarification meeting with the CLEC originator of the CR.

45. As a result of Qwest's approach, it is not surprising that a number of different "milestones" cover a single phase of the change control process – including nine "milestones" alone for the processing of a change request from its original submission to the posting of Qwest's final response to the CR on its website. *Id.*, ¶ 151. For example, Qwest cites "a possible 939 milestones" applicable to its processing of 159 OSS interface change requests – an average of approximately 6 "milestones" for each change request. *Id.*, ¶ 152. For the processing of 45 new CLEC-initiated product and process CRs, Qwest describes "a possible 328 milestones" – an average of more than seven milestones for each change request. *Id.*

46. Given the ministerial nature of many of the milestones, and the frequency with which Qwest must perform them, the fact that Qwest meets a high percentage (even 99 or 100 percent) of its milestones reveals little, if anything, about the degree of its actual compliance with the CMP. For example, even if Qwest met the "milestone" of holding a monthly CMP meeting, that fact provides no indication of the effectiveness of the meeting, including whether Qwest provided subject matter experts who were sufficiently knowledgeable and prepared to discuss particular change requests. In practice, Qwest has frequently failed to make such SMEs

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We track the CRs that have the initial response sent and the time frame indicated in our process. We also track when we post that initial response to the web. We have an obligation to present our response at the monthly CMP meeting, so we track that.

And then if we need to revise a response due to CLEC input, we have two CRs, one around sending out the final response; and the other is with regard to posting that final response to the web.

available at CMP meetings, rendering the meetings of limited value. That fact, however, does not appear to be reflected in Qwest's "milestones."

47. Furthermore, Qwest has not provided a full description of the "milestones" that it uses, or data supporting its calculations of the percentage of "milestones" that it has purportedly met. Although Qwest claims that supporting detail for the "milestones" is provided in Exhibit DLF-CMP-5 to the Filip Declaration (Filip Decl., ¶ 144), that exhibit does little more than to repeat the limited description of milestones in the declaration, and the total number of such milestones applicable to a specific section of the CMP document. *Compare, e.g., id.,* ¶¶ 151-152 (discussion of 939 milestones applicable to Qwest's processing of change requests) with *id.,* Exhibit DLF-CMP-5 (discussions of Sections 5.1 and 5.2 of CMP). Moreover, although the exhibit states that supporting data can be found on Qwest's website, the "supporting data" provide no list of the "milestones" or, even more importantly, the basis for Qwest's calculations of the percentages of "milestones" that it met.

48. Qwest's lack of detail reflects its resistance to providing the data to support its claims regarding "milestones." In April 2002, after finding that Qwest had "not address[ed] all of the FCC's criteria for a compliant change management plan," the Chairman of the Colorado PUC ordered Qwest to provide additional evidence –and, along with such information, "all back-up supporting information so that CLECs and Commission staff have full access to all documents

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Transcript of February 27, 2002, proceedings in Colorado PUC Docket No. 97I-198T, at 210 (testimony of Judith Schultz) (Qwest's Application in WC Docket No. 02-148, Appendix K, Vol. 1, Tab 1257).

Qwest has relied on to make its filing."[32] Although Qwest subsequently cited its "milestones" in

comments responding to the Chairman's order and in its oral presentation to the Colorado PUC,

Qwest provided no back-up data to support its contentions regarding the "milestones." When

AT&T requested the CPUC either to strike Qwest's "milestone" discussion from its comments or,

in the alternative, order Qwest to produce the back-up material, Qwest resisted any such

production.[33] In view of Qwest's refusal to provide such data, there is no basis for its claims that

it has met virtually all of its "milestones" – or that the milestones are a suitable substitute for

independent third-party testing of Qwest's adherence to the "redesigned" CMP over time.

49.   KPMG's report on its third-party testing confirms that Qwest cannot

establish adherence to the redesigned CMP over a defined period of time.[34] Although KPMG

established 18 test criteria for the CMP, KPMG concluded that it was "unable to determine"

whether Qwest satisfied the test requirements for seven of them (or nearly 40 percent of the total)

– which primarily involved the issue of whether Qwest has complied with the CMP. *See* KPMG

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[32] Colorado PUC Decision No. RO2-453-I, issued April 23, 2002, in CPUC Docket No. 97I-198T, at 9-10 (attached hereto as Attachment 9).

[33] *See* AT&T's Motion To Strike Portions of Qwest's Comments Regarding CMP or In the Alternative Grant CLECs an Extension of Time To File Responsive Comments and Waiver of Response Time, dated May 1, 2002 (attached hereto as Attachment 10). The Colorado PUC denied AT&T's motion on the ground that AT&T did not need such data – despite the Chairman's earlier, unequivocal order requiring Qwest to produce the data.

[34] Qwest asserts that the criteria in KPMG's Master Test Plan for its evaluation of change management "do not necessarily track the FCC's criteria for evaluating change management." Filip Decl., ¶ 98. The criteria in the MTP, however, were developed collaboratively by the participating parties, including Qwest. Furthermore, contrary to Qwest's assertion, the MTP requires that the CMP be tested for its compliance with this Commission's requirements governing the change management process. *See* MTP, § 23 ("Change Management Test"), Table 23.4.1.

Final Report at 522-542. In the summary of its Final Report, KPMG made clear that, given the

recent and incomplete nature of the redesigned CMP, it could not determine whether Qwest

complied with the CMP:

> Qwest and CLECs are still working on other important aspects of
> CMP, which were either *too new, or not yet mature enough to*
> *evaluate.* Accordingly, KPMG Consulting was not able to verify
> that Qwest:
>
> - *Adheres to the new System CMP's procedures and systems that track*
>   *information such as descriptions of proposed changes, key notifications,*
>   *dates, and change status.*
>
> - *Adheres to the new System CMP's schema for Change Request (CR)*
>   *prioritization and severity coding.*
>
> - *Complies with notification intervals and documentation release requirements*
>   *of the new System CMP;*
>
> - Has adequately defined and documented all aspects of the new
>   Product/Process CMP;
>
> - Has fully implemented procedures and systems in place in the new
>   Product/Process CMP to track information such as descriptions of proposed
>   changes, key notification dates, and change status;
>
> - *Adheres to the new Product/Process CMP schema for the prioritization and*
>   *for severity coding; and*
>
> - *Complies with notification intervals and documentation release requirements*
>   *of the new Product/Process CMP.*

KPMG Final Report at 17 (emphasis added).

50.   KPMG's findings were the result of its decision to close as "inconclusive" or

"unresolved" three exceptions that had previously found that Qwest failed to adhere to the CMP –

Exceptions 3094, 3110, and 3111.

51.   **Exception 3094.** In Exception 3094, originally issued in December 2001, KPMG found that "Qwest did not adhere to its established change management process for notifying CLECs about a proposed process change, and allowing input from all interested parties."[35] KPMG cited Qwest's implementation of a CLEC-impacting process change on only four business days' notice, without provision of adequate information to CLECs about the change – and over the CLECs' objections. KPMG Exception 3094, at 1.

52.   After conducting retesting, KPMG recommended in its disposition report dated May 21, 2002, that the exception be closed as unresolved. KPMG noted that the product/process procedures of the CMP had undergone "considerable revision in April 2002," and that Qwest had issued only one product/process change since that time which was governed by the notification intervals in the revised process. *Id.* at 3. KPMG concluded that, due to the "relatively few notifications issued since April 16, 2002 under the new process," it was "unable to make a conclusive determination that Qwest adheres to the process for Qwest-initiated Product/Process changes." *Id.* at 3-4.[36] As a result of the unresolved nature of Exception 3094, KPMG's Final Report concluded that KPMG was "unable to verify that the [product/process

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[35] *See* KPMG Exception 3094, Supplemental Disposition Report issued May 21, 2002, at 1. The various KPMG exceptions and observations discussed in this Declaration are included in Qwest's Application (Attachment 5, Appendix G). In addition, the KPMG exceptions are available at www.nrri.ohio-state.edu/oss/master/exceptions/exceptions.htm, and the KPMG observations are available at www.nrri.ohio-state.edu/oss/master/observations/observations.htm.

[36] KPMG found that, of the five product/process changes that Qwest initiated after April 16, 2002 (the date on which Qwest and the CLECs reached agreement about the revised process), four changes were "Level 1" (effective immediately) and therefore not subject to any notification intervals under the CMP. Exception 3094, Supplemental Disposition Report at 3.

portion of the CMP] had been fully implemented." KPMG Final Report at 540-541 (Evaluation

Criterion 23-2-8).

53.   KPMG's Disposition Report on Exception 3094 also listed the absence of an

agreed-to process for postponing a product/process change as a basis for closing the exception as

unresolved. KPMG Exception 3094, Disposition Report at 4. Although the parties reached

agreement on a postponement process on June 5, 2002, such agreement is so recent that Qwest

cannot establish that it has adhered to the new procedure "over time."

54.   Qwest suggests that Exception 3094 is irrelevant, asserting that this

Commission "has never required an RBOC to have a change management process for

product/process changes." Filip Decl., ¶ 110 & n.102.[37] The Commission, however, has defined

the change management process broadly:

> The change management process refers to *the methods and
> procedures that the BOC employs to communicate with competing
> carriers regarding the performance of, and changes in, the BOC's
> OSS system.* Such changes may include updates to existing
> functions that impact competing carrier interface(s) upon a BOC's
> release of new interoffice software, technology changes that require
> competing carriers to meet new technical requirements upon a
> BOC's software release date; additional functionality changes that
> may be used at the competing carriers option, or changes that may
> be mandated by regulatory authorities. Without a change
> management process in place, a BOC can impose substantial costs
> on competing carriers simply by making changes to its systems and

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[37] Qwest asserts that it also has satisfied certain concerns expressed in Exception 3094, due to its
recent agreement to a process for postponing such changes. Filip Decl., ¶ 110. However, Qwest
did not implement that postponement process until after it filed its first Section 271 application
with this Commission on June 13, 2002.

> interfaces without providing adequate testing opportunities and
> accurate and timely notice an documentation of the changes.[38]

The Commission has similarly defined "OSS" broadly to include "all of the automated and manual

functions a BOC has undertaken to provide access to OSS," including not only interfaces, but also

"an electronic or manual processing link between that interface and the BOC's internal operations

support systems (including all necessary back office systems and personnel)" and all legacy

systems that the BOC uses to provide UNEs and resale services to CLECs. *Ameritech Michigan*

Order, ¶ 134.

55.   The product/process CMP thus clearly falls within the scope of change

management as defined by the Commission. For example, as Qwest admits, its product/process

CMP includes manual processes – which the Commission has included within its definition of the

"OSS systems" that are subject to change management.[39]

56.   Moreover, requiring the inclusion of product/process changes in the change

management process is necessary to fully achieve the objectives of change management. Changes

to processes (such as manual processing of orders or the process for ordering particular

products), if made without prior notice, can increase a CLECs' costs – and disrupt its operations

– to the same extent as changes to electronic interfaces made without such notice. This is

particularly true in Qwest's region, where Qwest has devoted so much of its resources for OSS to

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[38] *Georgia/Louisiana 271 Order*, App. D, ¶ 41; *Texas 271 Order*, ¶ 107; *New York 271 Order*, ¶ 103 (emphasis added).

[39] Filip Decl, ¶ 22 & n.35 (citing CMP Framework, § 1). *See also* KPMG Final Report, § 2.1.2, at 520 (stating that product/process CMP enables CLECs to "request changes to Qwest wholesale

DECLARATION OF JOHN F. FINNEGAN,
TIMOTHY M. CONNOLLY, AND MITCHELL H. MENEZES   *REDACTED*
FCC WC DOCKET NO. 02-189   *FOR PUBLIC INSPECTION*

processes (such as its extensive manual processing of CLEC orders, described below) in lieu of

developing fully automated OSS systems. Exempting the product/process portion of the CMP

from the requirements of Section 271 would give Qwest *carte blanche* to make changes in

substantial portions of its OSS without meeting the criteria of change management that this

Commission has declared necessary to give CLECs a meaningful opportunity to compete.

       57.   Qwest's suggestion that it is not required to establish a product/process

CMP also ignores the fact that – as Qwest and the CLECs have always understood – "systems

changes" and "product/product changes" cannot easily be separated. It is often difficult to

determine whether a particular change is a "systems change" or a "product/process change,"

because some changes can fall into either category. For example, at the January 16, 2002 CMP

product/process meeting, Qwest proposed *systems* fixes as its proposed solution to two CLEC

product/process change requests. Qwest also advised AT&T to close one of its product/process

CRs and open a new systems CR.[40] In addition, the CMP Master Redline document itself

contains a section, entitled "Crossover Change Requests," which addresses situations where

systems change requests have product/process implications, and vice versa.[41] This section was

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products or processes, such as changes to the manual processing of orders and other
transactions").

[40] *See* electronic mail message from Mitchell Menezes (AT&T) to Jim Maher and Judith Schulz
(Qwest), dated January 23, 2002 (attached hereto as Attachment 11).

[41] *See* CMP Master Redline, Section 5.6. That provision states, in pertinent part: "During the
operation of this CMP, there may be situations when systems CRs have requirements for
product/process discussions or solutions, or when product/process CRs require system solutions."
Filip Decl., Exh. DLF-CMP-2 at 45.

included in the CMP Redline because both Qwest and the CLECs recognized that there is a close

connection between systems issues and product/process issues.

58.   **Exception 3110.** In Exception 3110, issued on January 24, 2002, KPMG

found that "Qwest did not adhere to its Change Management Process document management

standards and tracking of CLEC notifications through the Mailout Notification System."[42]

KPMG found, *inter alia*, that Qwest had failed to consistently provide notifications of

documentation changes, outages, and other CLEC-affecting matters in a timely manner. KPMG

Exception 3110, at 1.

59.   After conducting retesting, KPMG issued a disposition report on May 21,

2002, recommending that Exception 3110 be closed as "inconclusive." KPMG found that: (1)

although Qwest had procedures to prepare documents and distribute them according to the

notification intervals in the CMP, KPMG had been "unable to observe adherence to the

documented process"; (2) the "relatively few" (eight) software release notifications that Qwest

had distributed between April 4 and May 3, 2002 were insufficient to enable KPMG "to fully

validate Qwest's adherence to the specified intervals"; (3) Qwest had missed at least one of the

notification dates during this period; and (4) during the period from January through May 2002,

Qwest issued 10 versions of the OSS release calendar without proper notice to the CLECs of the

changes applied – a deficiency that was likely to impede CLECs "in coordinating the necessary

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[42] KPMG Exception 3110, Supplemental Disposition Report issued May 21, 2002, at 1.

resources for a new or upgraded system release if the published release dates frequently change."

Id. at 3-4.[43]

60.   Because of the "unresolved" nature of Exception 3110, KPMG found in its

Final Report that it was unable to determine whether Qwest had met Evaluation Criterion 23-1-9,

which – *i.e.*, whether Qwest's "Systems" (OSS interface) CMP "complies with notification

intervals and documentation release requirements."[44] KPMG Final Report at 532-533. For the

same reason, KPMG found that it was unable to determine whether Qwest satisfied Test Criterion

23-1-7, which – *i.e.*, whether the systems CMP has procedures and systems in place "to track

information such as descriptions of proposed changes, key notification dates, and change status."

Id. at 528-529.[45]

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[43] Qwest asserts that its "100 percent compliance with the CMP release notification intervals" since April 1 is suitable to overcome KPMG's inability to fully validate its adherence to those intervals. Filip Decl., ¶ 115. The alleged "100 percent compliance," however, encompasses a period of approximately two and one-half months. *Id.*, ¶¶ 159-160.

[44] KPMG found that it also was unable to determine whether Qwest satisfied Evaluation Criterion 23-2-9, which made the same inquiry as Test Criterion 23-1-9 for the Product/Process CMP, because – as a result of Qwest's failure to fully implement the Product/Process CMP at the time – KPMG "was unable to observe adherence to notification intervals and documentation release requirements for Qwest-initiated changes." KPMG Final Report at 541-542 (Evaluation Criterion 23-1-9).

[45] KPMG similarly found that it was "unable to determine" whether Qwest satisfied Test Criterion 23-2-7, which was intended to determine whether the Product/Process portion of the CMP had such tracking systems in place, because "Qwest had not fully implemented Product/Process CMP at the conclusion of the [KPMG] Evaluation." KPMG Final Report at 540-541. Contrary to Qwest's assertions, the new tracking procedures that it has established do not satisfy KPMG's concerns, since the procedures also were implemented only on April 1, 2002 and Qwest has presented no reliable evidence regarding their effectiveness or Qwest's adherence to them. *Id.*, ¶¶ 114-115.

61.   **Exception 3111.** In Exception 3111, issued on December 12, 2001, KPMG found that the Systems CMP lacked guidelines for prioritizing and implementing CLEC's initiated change requests, and "criteria are not defined for developing the scope of an OSS Interface Release Package."[46] Among the deficiencies that KPMG specifically listed were the lack of information in Qwest's documentation regarding Qwest's method of allocating available capacity for all systems CRs to be included in a future release, and Qwest's procedures for identifying the various "CR packaging options" for software releases that it recommends to CLECs. KPMG Exception 3111, at 1.

62.   KPMG conducted retesting by reviewing Qwest's documentation and by observing Change Management activity and meetings through April 4, 2002. In a disposition report issued on April 4, KPMG recommended that Exception 3111 be closed as "inconclusive." KPMG stated that because Qwest had requested that KPMG conduct no further testing regarding this exception, KPMG was unable to confirm that the newly-established processes for prioritization and packaging removed the deficiencies that it had identified in the exception: "the process was not completely established and followed for IMA Release 10.0, and packaging and prioritization for Release 11.0 is scheduled to occur beyond the completion of the test." *Id.* at 3. KPMG concluded:

> Given the significance of prioritization and packaging processes in allocating IT resources and managing overall changes applied to Qwest Wholesale OSS interfaces, KPMG Consulting cannot reach a definitive conclusion regarding current processes without verifying the participants' adherence. Qwest requested on April 3, 2002, that KPMG Consulting conduct no further testing related to

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[46] KPMG Exception 3111, Disposition Report issued April 4, 2002, at 1.

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this Exception. Qwest recognized that this will not allow KPMG to
observe Qwest's adherence to the complete end-to-end
prioritization and packaging processes for a single major system
release.[47]

63.   Citing the "inconclusive" nature of Exception 3111, KPMG's Final Report

found that it was "unable to determine" whether Qwest satisfied Evaluation Criterion 23-1-8,

which involved the issue of whether Qwest's Systems CMP adequately defined the criteria for the

CMP's prioritization system and for severity coding. KPMG Final Report at 530-531. As in its

disposition report on Exception 3111, KPMG stated in its Final Report that it "was not able to

observe the prioritization of a major release in accordance with the documented process." *Id.* at

530 (Evaluation Criterion 23-1-8).

64.   Qwest suggests that KPMG's conclusions in Exception 3111 and Evaluation

Criterion 23-1-8 resulted exclusively from the fact that KPMG did not have the opportunity to

observe either the treatment of "Regulatory Changes" after the parties resolved their dispute

regarding the definition of such changes, or the working of the Special Change Request Process

("SCRP"), which has been adopted only recently. Filip Decl., ¶¶ 111-112. Qwest is flatly wrong.

Both Exception 3111 and Evaluation Criterion 23-1-8 make clear that KPMG's determination

was based on the absence of a complete CMP, including prioritization and packaging processes,

and on KPMG's resulting inability to assess Qwest's compliance with those processes on an end-

to-end basis – not merely on the absence of the SCRP or a clear definition of "Regulatory

Change" in the process. *See* KPMG Exception 3111, Disposition Report at 3; KPMG Report at

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[47] *See* KPMG Exception 3111, Disposition Report at 3 (emphasis added).

530-533 (Evaluation Criterion 23-1-8).[48] Moreover, Qwest's explanation is disingenuous,

because Qwest requested KPMG *not* to conduct any further testing – thereby denying KPMG the

opportunity to evaluate Qwest's adherence to a complete, end-to-end prioritization and packaging

process, including the SCRP and the treatment of regulatory changes.[49]

65.   The lack of evidence to establish Qwest's compliance with the CMP is

further confirmed by the separate third-party testing of the CMP conducted by Cap Gemini Ernst

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[48] Qwest asserts that KPMG's inability to observe the prioritization of regulatory changes and the special change request process is "not relevant to Section 271 approval," because the Commission does not require such changes to be subject to prioritization. Filip Decl., ¶¶ 111-112. This assertion borders on the frivolous. In its analysis of previous Section 271 applications, the Commission has reviewed the prioritization process – and the degree of the BOC's adherence to it – in determining whether the BOC's change management process meets the requirements of Section 271. *Georgia/Louisiana 271 Order*, ¶¶ 183-184, 193; *New York 271 Order*, ¶¶ 106, 115, 124-125. Furthermore, as previously discussed, the Commission has expressly stated that changes mandated by regulatory authorities, and affecting CLECs, fall within the scope of change management. *E.g., Texas 271 Order*, ¶ 107. Finally, because the Commission has recognized that the change management process involves changes affecting CLECs, the fact that a change is implemented under the Special Change Request Process (where a CLEC may receive expedited implementation of a change request assigned a low priority) or pursuant to a regulatory mandate does not remove it from the scope of change management. A change implemented by a BOC that affects CLECs should fall within the scope of change management, regardless of its origin or the method by which it is being financed.

[49] *See* KPMG Exception 3077, Disposition Report at 3; Filip Decl., ¶ 114 (stating that KPMG did not "observe a single release from start to finish under the completed prioritization rules"). Qwest's rationalization that KPMG was able to observe the prioritization process for IMA Releases 10.0 and 11.0 does not change the fact that KPMG was unable to evaluate Qwest's adherence to a complete, end-to-end prioritization and packaging process. *See id.* As KPMG stated in its Final Report, Qwest bypassed the prioritization process for Release 10.0 for five of its own change requests by classifying them as regulatory requests, and proceeded to schedule the implementation of four of the five requests in that release over the CLECs' objections to the "regulatory" classification, which enabled Qwest to give the requests preferential treatment. KPMG Report at 530-531 (Evaluation Criterion 23-1-8). Similarly, in the prioritization process for Release 11.0, Qwest included two PID/PAP-related changes as regulatory changes over CLEC objections. The Colorado PUC subsequently ruled that such PID/PAP-related changes should not be classified as regulatory. *Id.* at 531.

& Young in Arizona. In its May 1, 2002, report on the CMP, Cap Gemini concluded that

"Insufficient time has passed since the inauguration of the redesign process to determine whether

Qwest has established a pattern of compliance with its redesigned CMP over time." Filip Decl.,

Exh. DLF-CMP-9 at 31. Based on that report, the Staff of the Arizona Corporation

Commission, in its May 7, 2002, Supplemental Report on Change Management, stated that there

was "one important exception" to its finding that the CMP otherwise met this Commission's

criteria for an effective change management process:

> Because all facets of Qwest's Change Management Process have
> not been in existence for an extended period of time, it is simply not
> possible to verify that Qwest has an established pattern of
> compliance and has adhered to this pattern of compliance over
> time. *This is critical because it is one thing to have a process that
> looks good on paper versus a process that works in practice.*

Id., Exh. DLF-CMP-10, at 28 (¶ 86) (emphasis added). *See also* Filip Decl., ¶ 120 (admitting that

ACC Staff found that Qwest had not satisfied the requirement "of showing a pattern of

compliance over time").

66. Finally, in addition to the specific instances of noncompliance noted by

KPMG, Qwest has already failed to adhere to the Redesigned CMP even during its relatively brief

existence. As the four examples described below demonstrate, Qwest has breached its

commitments under the CMP in significant respects.

67. **Failure to advise CLECs of Qwest's ability to provision ISDN loops**

with IPG. In approximately March 2000, Qwest advised some of its CLEC customers that it

could not provision ISDN loops when there was integrated pair gain ("IPG") on that loop. As a

result, CLECs neither placed orders in areas Qwest represented that IPG was present on an ISDN loop, or marketed in such areas.

68. In March 2002, however, CLECs learned (by pure happenstance) that Qwest *was* able to provision ISDN loops for its *retail* customers even when IPG is present – and had been doing so for some unspecified period of time. Qwest had not previously advised the CLECs of this change in retail products and processes, even though Qwest and the CLECs had agreed in the "redesign" meetings upon a method by which Qwest was required to advise CLECs of any product or process changes on its retail side (including new products) that would also impact CLECs.

69. Qwest attempts to defend its conduct by asserting that "Qwest has continuously provisioned these loops for CLECs for years." Filip Decl., ¶ 154. Qwest, however, does not dispute that it previously advised some CLECs two years ago that it did *not* provision such loops, that it did not subsequently advise the CLECs when the situation changed, and that it had previously agreed to advise CLECs of such changes.

70. **Failure to provide advance notice of changes in NC/NCI codes.** A key issue in the CMP redesign negotiations was the timing of the advance notice that Qwest would provide for Qwest-initiated product or process changes. The parties ultimately agreed that each such change would be categorized at a specific level, with a Level 1 change requiring the least amount of notice and a Level 4 change requiring the most advance notice (as well as the submission of a change request). That procedure was to be implemented on or before April 1, 2002.

71.   During their negotiations, all parties agreed that any changes to NC/NCI codes would be a "Level 3" change, which requires at least 31 calendar days' notice prior to implementation. Yet on April 4, 2002 – only 3 days after the new procedure became effective -- Qwest sent CLECs a notice advising CLECs that it was changing certain NC/NCI codes *that same day. See* Filip Decl., Exh. DLF-CMP-17. Such notice was plainly insufficient for CLECs to modify their systems to conform to the new codes.

72.   Qwest asserts that the April 4 notice did not change the NC/NCI codes, "but only identified NC/NCI codes that were invalid." Filip Decl., ¶ 155. This is incorrect. The April 4 notice stated that CLECs would be required to use a net set of NC/NCI codes in lieu of the "invalid" codes. *Id.*, Exh. DLF-CMP-17.[50]

73.   **Problems in Lifting Local Service Freezes.** Qwest similarly disregarded the requirements of the CMP with respect to its local service freeze ("LSF"). When in place, an LSF prevents the migration of a Qwest retail customer's service to a CLEC unless and until the customer requests its existing carrier to remove the freeze from its account. Thus, when a customer with a "freeze" in place wishes to migrate from Qwest to a CLEC, the freeze must be lifted before Qwest will honor the order.

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[50] Qwest also cites a March 4, 2002, notice that it purportedly sent to CLECs, advising them of the forthcoming change in NC/NCI codes. *See* Filip Decl., ¶ 155 n.163 & Exh. DLF-CMP-16. Qwest's website listings of the notices posted on March 4, however, does not indicate that any of the notices involved changes to NC/NCI codes. Moreover, the March 4th notice was issued as a *systems* notification, even though the parties agreed that changes to the NC/NCI codes are a *product/process* notification.   Although Qwest may contend that "notice is notice," different groups of personnel in CLECs can – and do – handle changes according to whether the changes are classified as systems changes or product/process changes. Thus, notification to one group may not result in notification to the group actually responsible for implementation of the change.

74.   During the week of February 18, 2002, Qwest rejected LSRs submitted by AT&T because of a freeze placed on the customers' accounts, even though AT&T had followed the appropriate process for removal of the freeze. AT&T and its customers experienced repeated difficulty in having Qwest remove the freeze and migrate the customer to AT&T. Because of these problems, AT&T engaged in constant correspondence and discussions with Qwest in an effort to resolve the problem. Qwest, however, simply responded by implementing a manual "work-around" solution that (due to the delays inherent in manual processes) results in later provisioning dates than those that would otherwise occur if Qwest implemented an efficient, electronic solution.

75.   AT&T therefore submitted a change request in March 2002 under the CMP, requesting that Qwest develop an effective process for lifting the freezes on residential accounts. Rather than process the change request, however, Qwest responded that the issue should not be addressed in the CMP because it was litigating this issue – and Qwest's change management team was not prepared to discuss any freeze policy issues. Because the freeze problem was adversely affecting its business, AT&T requested that the change request be expedited, using the then-existing (and incomplete) exception process in the CMP. Only in mid-June 2002 did Qwest finally complete process changes that adequately resolved the problem.[51]

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[51] Qwest asserts that the problems experienced by AT&T "may have stemmed from customer confusion between the local carrier freeze and the interexchange carrier PIC freezes." Filip Decl., ¶ 155 n.163. However, even if Qwest's explanation is correct, any "customer confusion" is due entirely to Qwest, which offered the local freeze process available to its customers without establishing proper, well-defined rules and procedures.

76.   This experience simply highlights Qwest's failure to comply with the change

management process. Clearly, Qwest implemented the local service freeze without first

establishing a clear, functioning process for removal of the freeze when end-users seek to change

carriers. Even when CLECs followed the process that Qwest had announced, their orders were

rejected. Moreover, despite the requirements of the CMP that Qwest provide knowledgeable

subject-matter experts at CMP meetings to enable meaningful discussion and resolution of change

requests, Qwest failed to provide such experts at meetings.   This failure simply delayed any

resolution of the issue.

77.   The difficulties that AT&T experienced also demonstrated the inability, if not

the unwillingness, of Qwest to implement an adequate process to address adverse impacts that

CLECs experience when Qwest implements a change to its systems and processes. When AT&T

experienced order rejections and notified the Qwest help desk and escalation contacts – the

personnel whom, under Qwest's procedures, AT&T is supposed to contact in order to resolve

service issues – such personnel had no idea how to help. Although Qwest and the CLECs agreed

at their June 17-18 meeting to a new process for proper support of process-related problems, the

new process can be effective only to the extent that Qwest complies with it.

78.   **Failure to advise CLECs of system fixes to correct ADUF problems.**

During its carrier-to-carrier testing with AT&T in Minnesota in 2001, Qwest failed to return a

high percentage of access daily usage files ("ADUFs"). As a result, AT&T filed a change request

under the CMP on February 8, 2002, to resolve this issue. However, during a meeting to discuss

AT&T's change request, Qwest stated that the problem was being addressed in the ROC test.

Qwest then later advised the CLECs that it had implemented a solution to the problem "out of

process," *i.e.*, without providing the advance notice of the change required under the CMP.

Subsequent to its admission that it should have followed the CMP in implementing the "fix,"

Qwest changed its position and rationalized that CLECs were not given advance notice because

the third-party tester and its pseudo-CLEC (which had also noted Qwest's failure to return all

DUF files that were expected) had not reported the problem to Qwest's help desk.

79.   For these reasons, Qwest has not established a pattern of compliance with its

"redesigned" change management process.[52]

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[52] Qwest cites the statements of an Administrative Law Judge and Mr. Menezes in proceedings held in Washington State in April 2002 to support its assertion that "the CLECs themselves understand" that the Redesigned CMP meets all the requirements of Section 271. *See* Filip Decl., ¶ 140. Contrary to the misleading impression given by Qwest, however, Mr. Menezes did not state that the CMP would satisfy the requirements of Section 271 once the parties reached agreement on all issues, without regard to the issue of Qwest's compliance with the CMP. Instead, he emphasized:

> Another component is that Qwest *has adhered to this process over*
> *time. . . .* And Ms. Doberneck [Covad's counsel] has mentioned
> two or three months. And I think that 's what we would be looking
> for, some period of time *once it's all done*, and evidence to support
> that there is this adherence.

Transcript of April 26, 2002 proceedings in Docket No. UT 003022 (Washington Utilities Commission) at 7516 (testimony of Mitchell Menezes) (emphasis added). *See also id.* at 7459, 7469 (statement of Megan Dobernick, counsel for Covad, emphasizing need for proof by Qwest of a pattern of compliance with the CMP before CMP can be found to be in compliance with Section 271). Although the reply brief that Qwest recently filed in *Qwest I* cited Mr. Menezes' reference to "two to three months" to support its claim that two months is adequate time to demonstrate a pattern of compliance (*see* Qwest's Reply Comments in WC Docket No. 02-148, at 57), Qwest's reliance on that testimony is misplaced. In the first place, Mr. Menezes made clear that the two-to-three month period should begin only "once it's all done" – and even the most significant provisions of the CMP were not fully negotiated and completed until June 2002. Moreover, the statement of Covad's counsel in the proceeding, with which Mr. Menezes was expressing agreement, was that the CLECs preferred "a good six months," but that – recognizing the time frame under which the parties were operating in the Washington UTC's Section 271 proceeding and the then-forthcoming May 28 completion date of the KPMG test – Qwest should

B.   Qwest Fails To Provide an Adequate Testing Environment.

80.   As previously stated, one of the factors in the Commission's determination of

whether a BOC's change management process affords CLECs a meaningful opportunity to

compete is "the availability of a stable testing environment that mirrors production."

Georgia/Louisiana 271 Order, ¶ 179.   The Commission recently reiterated that such an

environment is an essential prerequisite of any effective change control process:

> A stable testing environment that mirrors the production
> environment and is physically separate from it is a fundamental part
> of a change management process ensuring that competing carriers
> are capable of interacting smoothly and effectively with a BOC's
> OSS, especially in adapting to interface upgrades. Moreover, a
> testing environment that mirrors production avoids "a competing
> carrier's transactions succeeding in the testing environment but
> failing in production."

Id., ¶ 187 (quoting *Texas 271 Order*, ¶ 132).[53]   Qwest, however, does not offer adequate test

environments to CLECs for OSS functions.

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be required to demonstrate at least "two or three months of compliance." *Id.* at 7470-7471
(statement of Megan Doberneck).

[53] CLECs particularly need an adequate test environment in view of Qwest's failure to cooperate
in performing carrier-to-carrier tests with CLECs. Although AT&T's interconnection agreement
with Qwest provided for carrier-to-carrier testing, Qwest refused AT&T's request for such
testing. As a result, AT&T was required to file a complaint with the Minnesota PUC, asserting
that Qwest had breached the interconnection agreement.   Qwest conducted the testing only after
the PUC ordered Qwest to do so. In his recommendation to the PUC, the Administrative Law
Judge appointed to review the complaint found that Qwest committed a "knowing, intentional,
and material violation" of its obligation to engage in cooperative testing under the Interconnection
Agreement by its refusal to conduct AT&T's UNE-P test from September 14, 2000 to May 14,
2001. The ALJ further found that Qwest's refusal constituted a "knowing and intentional refusal"
to provide a service, product, or facility to a telecommunications carrier in accordance with a
contract, in violation of Minnesota law. On April 9, 2002, the Minnesota PUC agreed that Qwest
had engaged in anticompetitive behavior, and had knowingly and willfully violated both the
agreement and State law. On May 14, 2002, the PUC fined Qwest $900,000 for these violations.

1.   **The Test Environments Offered By Qwest Fail To Meet the**
        Commission's Criteria for an Adequate Test Environment.

81.   In its Application, Qwest relies on the two testing environments that it offers

to CLECs for pre-ordering and ordering functions -- the Interoperability Environment and the

Stand-Alone Test Environment ("SATE"). Application at 145-146; OSS Decl., ¶ 689. However,

as KPMG found in its third-party testing, neither the Interoperability Environment nor SATE

meets the Commission's requirements that a testing environment be stable, mirror the production

environment, and be separate from the production requirement..

a.   **The Interoperability Environment**

82.   The Interoperability Environment is inadequate as a test environment because

it neither mirrors, nor is separate from, production – as Qwest itself has acknowledged. Qwest

undertook its efforts to implement SATE as an additional test environment in 2001 precisely

because the Interoperability Environment was too limited.   In a "White Paper on the IMA EDI

Stand-Alone Test Environment" issued on June 18, 2001, Qwest stated its reasons for developing

SATE as an alternative to Interoperability Testing:

> Qwest recognizes that Co-Providers [CLECs] feel that their market
> entry is delayed by limitations of the current EDI interoperability
> test process:
>
> • Paper versions of orders must always be sent to Qwest prior to testing. Co-
>   Providers cannot attempt a function and get an immediate response.
>   Therefore, the learning process can be time consuming, and both Qwest and
>   the Co-Providers must have staff to fully review these paper transactions.
>
> • Co-Providers must maintain production accounts for testing as real production
>   systems are called upon during testing. Some providers do not have end-user
>   accounts within Qwest's network. Others are hesitant to run tests on their
>   end-user's accounts.

DECLARATION OF JOHN F. FINNEGAN,
TIMOTHY M. CONNOLLY, AND MITCHELL H. MENEZES   ***REDACTED***
FCC WC DOCKET NO. 02-189   *FOR PUBLIC INSPECTION*

- Additionally, Interoperability testing has an impact on Qwest's production environment as well, such as the reservation of real telephone numbers and appointments during the testing process.[54]

Qwest acknowledged that CLECs "need an unsupervised test environment that does not rely on real production accounts," that is "static, returning the same response every time," and that gives CLECs "the opportunity to run functions and get realistic errors and responses as a result."[55]

83. Two months after Qwest issued its White Paper, KPMG issued Exception 3029, which found that the Interoperability Environment "does not offer sufficient testing capabilities" to CLECs.[56] Specifically, KPMG found that the Interoperability Environment: (1) "does not offer true end-to-end testing capabilities through to Qwest's provisioning and billing systems"; (2) did not support flow-through orders in the production environment, thereby precluding CLECs from predicting the performance of flow-through orders in production and limiting "the ability of a CLEC and Qwest to test completion of orders in a timely manner"; and (3) requires CLECs to use actual customer accounts and production data, which "could adversely impact CLEC customers." KPMG Exception 3029, Disposition Report at 1.

84. KPMG found that these limitations "could hinder a CLEC's ability to effectively test its EDI interface capabilities." *Id.* As a result of the additional time that the Interoperability Environment required in order for a CLEC to ensure the functionality of the OSS

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[54] "A White Paper on the IMA EDI Stand-Alone Test Environment," dated June 18, 2001 ("SATE White Paper"), at 4 (attached hereto as Attachment 12).

[55] SATE White Paper at 4.

[56] *See* KPMG Exception 3029, Disposition Report dated March 14, 2002, at 1.

systems, the CLEC could experience an increase in costs and a decrease in customer revenues.

Id.

85.   Qwest took no remedial actions in response to Exception 3029. Instead,

Qwest advised KPMG in October 2001 that "Qwest has no plans to continue to enhance the

Interop environment. Qwest will continue to enhance SATE." *Id.* at 2.

86.   Even leaving aside the Qwest White Paper and Exception 3029, Qwest's

Application acknowledges deficiencies in the Interoperability Environment that preclude it from

meeting the requirements of the Commission. First, the Interoperability Environment is not

separate from the production environment. As Qwest states, that environment "uses real

customer account data and temporarily uses production systems for preorder and LSR validation

prior to the submittal of the LSR." OSS Decl., ¶ 711. *See also id.,* ¶ 712 (transactions in

Interoperability Environment are "partially processed in production systems").[57] This creates a

real – and unacceptable – risk that the testing will cause the production systems to "crash,"

thereby causing all CLECs to lose access to Qwest's interfaces and legacy systems.

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[57] In view of this statement, and the statements in its White Paper, Qwest's argument that the Interoperability Environment is "'physically separate' from the production environment" is illogical. *See* OSS Decl., ¶ 697. Furthermore, the bases that Qwest offers for its argument do not withstand scrutiny. For example, although Qwest stresses that it uses a "test copy" of the IMA system that is used in production (*id.,* ¶¶ 695, 697), it fails to mention that all of the other systems and databases to which even the test copy of the IMA system is connected are production systems (such as CRM, Fetch n'Stuff, Data Arbiter, and PREMIS) that are critical resources for the day-to-day operation of the IMA system. These various systems support pre-ordering and ordering for production users concurrently with users of the Interoperability Environment – thereby creating the risk that actual production transactions could become corrupted.

87.   Second, the Interoperability Environment does not mirror the production

environment. CLECs using the Interoperability Environment receive EDI messages that are

manually transmitted by Qwest personnel, even if the messages would be transmitted

electronically in actual production. *Id.*, ¶¶ 697, 712. In addition, the Interoperability

Environment continues to lack flow-through capability. As a result, CLECs using the

environment have no way of predicting the performance of their orders, and the responses that

they will receive, in actual production.[58]

b.   Qwest's Stand-Alone Test Environment (SATE)

88.   The SATE, although intended by Qwest as an improved alternative to the

Interoperability Environment, also is inadequate to give CLECs a meaningful opportunity to

compete. First, SATE is not a stable test environment. The Commission has stated that "a stable

testing environment means that no changes by the BOC are permitted after the testing period

commences."[59] Unless the testing environment is stable, CLECs cannot "certify that their OSS

will be capable of interacting smoothly and effectively with [the BOC's] OSS, as modified." *New

York 271 Order*, ¶ 109.

89.   Although Qwest places pre-production releases in its SATE thirty days prior

to implementation of the release, Qwest does not "freeze" both the test and implementation

versions such that changes cannot be made to one without making the same changes in the other.

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[58] Even if, as Qwest asserts, 27 CLECs have used the Interoperability Environment at some point, that fact is no indication of its suitability as a testing environment. *See* Filip Decl., ¶ 695. Until Qwest made SATE available for use in August 2001, the Interoperability Environment was the only test environment that CLECs could use to test the EDI interface.

Thus, the test release may differ from the release that Qwest actually implements – and the

environment in which CLECs test may therefore differ from what they ultimately encounter in

production. The SATE, therefore, cannot be regarded as stable.[60]

90.   Second, the SATE does not mirror the production environment in numerous

respects, as KPMG found in its third-party testing. Qwest's SATE, for example, does not offer

CLECs testing capabilities for all of the products that Qwest offers in production. Instead, as

KPMG found in its Exception 3095, the SATE "only supports a subset of the products and

transactions that are available in the IMA production environment." That deficiency, KPMG

found, "prohibits CLECs from testing any desired product before migrating to the production

environment."[61]

91.   An evaluation by Hewlett-Packard in connection with the third-party test of

Qwest's OSS in Arizona demonstrates that SATE fails to support many of the products that

Qwest offers in production. Of the 80 products that HP listed as being offered by Qwest in

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[59] *Texas 271 Order*, ¶ 132 n.350; *New York 271 Order*, ¶ 109 n.301.

[60] The instability of the SATE is also evidenced by the constant updates that Qwest makes to its new releases, and the changes that CLECs using the SATE are then required to make, in the weeks prior to implementation of the release. For example, during the SATE New Release evaluation in Arizona, where Qwest was in the process of implementing SATE Release 9.0, Qwest released 8 versions of its SATE Data Document between January 21 and February 25, 2002, when SATE Release 9.0 was implemented for use by other CLECs. This series of constant updates included two versions of releases 9.04 and 9.05.

[61] KPMG Exception 3095, Disposition Report dated April 11, 2002, at 1.

Arizona, only 34 products – or 42.5 percent of the total – were included in SATE release 8.0.[62]

Thus, 46 products, or 57.5 percent of the total, were not included in SATE release 8.0.

92. Some of the products that Qwest offers in the production environment, but

has not included in SATE, are:

- BRI ISDN

- Qwest DSL

- Digital line side port

- DID in only trunk

- Centrex 21

- Loop splitting

- Line splitting

- Unbundled DS1 DID/PBX trunk port and facility.

93. The lack of a full product set for SATE inhibits CLECs seeking to introduce

new products into the market. Under Qwest's existing processes, a CLEC must submit a change

request to add any product to SATE. The change request must then await a prioritization vote, at

which the requesting CLEC needs the support of other CLECs to give its change request a higher

priority over other system-affecting requests. Even if assigned a high priority, the implementation

of the request is subject to Qwest's determination as to whether sufficient resources are available

to implement the request. Under the most optimistic scenario, almost a year will pass between

submission and actual implementation of the request. Thus, the requested product or feature

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[62] *See* Hewlett-Packard "Report 7 – Products Offered in AZ," issued December 21, 2001, at 5 (attached hereto as Attachment 21).

might not be available in the SATE until well after the CLEC has scheduled its market entry or its introduction of the product.

94. AT&T's own experience reflects the deficiencies of the change request process as a means of adding more products and functionality to SATE. AT&T submitted two change requests in December 2001 to add line splitting and loop splitting to SATE. Although these requests were prioritized, they have still not been implemented – more than seven months after their submission. In fact, because the priorities voted for AT&T's CRs were not sufficiently high to make the "cut" for the next scheduled SATE release (Release 11.0), they must now be re-prioritized. As a result, the change requests likely will not be implemented until at least March 2003, when SATE Release 12.0 is scheduled for implementation. Similarly, Qwest has not implemented any of the nine change requests that it submitted in early 2002 for the inclusion of additional products in SATE (and did not subsequently withdraw). Qwest has scheduled only two of those nine change requests for implementation. *See* OSS Decl. ¶¶ 757-758.

95. In its Exception 3077, KPMG found four additional deficiencies in Qwest's SATE that precluded it from mirroring the production environment:

- SATE did not generate post-order responses (such as firm order confirmations) in the same manner as they are created in the production environment because the responses were sent manually, even if they would be sent electronically in actual production.

- Flow-through orders were not supported in SATE, even though those types of orders would be processed in the production environment.

- The volume of order responses supported by SATE was restricted due to Qwest's need to send those responses manually.

- The data contained within the order responses sent to users of SATE were not consistent, and may not mirror the data that would be found in production responses.[63]

96. Following the issuance of Exception 3077, Qwest submitted seven responses attempting to point out corrections and new features that, it believed, would resolve the deficiencies noted by KPMG. However, when it became apparent that its responses did not fully satisfy KPMG's concerns, Qwest requested on April 8, 2002, that KPMG close the exception as "unresolved" – which KPMG did on April 15, 2002.

97. In its Disposition Report on Exception 3077, KPMG found that, despite improvements made by Qwest, the SATE still did not mirror the production environment in three critical respects: (1) although Qwest had installed an enhancement to the SATE in January to provide automated responses, that enhancement – called Virtual Interconnect Center Knowledge Initiator, or "VICKI" – "does not support real world scenario capabilities"; (2) the SATE still lacked flow-through capability; and (3) the data that are contained within the responses sent on orders in the SATE were not consistent, and may not mirror the data that would be found in production responses. KPMG Exception 3077, Disposition Report at 3-4.[64]

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[63] *See* KPMG Exception 3077, Disposition Report dated April 15, 2001, at 1.

[64] KPMG found that Qwest had satisfied one of the deficiencies in SATE originally identified in Exception 3077 – the limitation on the volumes of responses that could be returned in SATE due to manual response testing. At the time KPMG issued Exception 3077, Qwest's documentation stated that post-order responses were manually generated and that, each business day, firm order confirmations would be generated only for the first ten order transactions received the prior business day. The documentation further stated that regression responses other than FOCs would be returned only within 5 days of a request for a response. In its disposition report on Exception 3077, KPMG found that this issue had been resolved because manual generation of responses would be reduced by the implementation of VICKI and Qwest's planned implementation of flow-

98.   The "real world scenario" testing which the SATE does not support is

defined in Qwest's White Paper on the SATE as testing that "will allow CLECs to test the exact

message they would receive in production for the LSR they sent."[65] KPMG found that "VICKI is

inherently dissimilar to the way in which orders are processed in the production environment,"

because CLECs must populate the "Remarks" field of an LSR with a prescribed VICKI "path"

and specify the time frame in which the CLEC wishes to receive the response.[66] As KPMG noted,

this requirement precluded "real world scenario testing":

> Without [real world scenario testing], KPMG Consulting does not
> believe that VICKI provides CLECs an understanding of how
> different types of transactions will react in the production
> environment. Although VICKI helps CLECs to understand the
> EDI mapping structure and to determine if their systems can accept
> certain types of responses for the orders submitted, by design, it
> does not support interface testing capabilities. KPMG Consulting
> considers the real world scenario testing an essential component to
> a complete EDI testing environment.[67]

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through capability in SATE. In addition, KPMG found, Qwest had revised its documentation to
remove any limitations on the number of responses that could be generated. *See* KPMG
Disposition Report on Exception 3077 at 3-4. KPMG, however, did not test the performance of
VICKI or otherwise determine whether the limitations had, in fact, been eliminated.

[65] KPMG's Third Response to Exception 3077, dated April 3, 2002, at 16 (quoting Qwest's
White Paper on the Stand-Alone Test Environment). Qwest's White Paper further states that
"With real world scenario testing, when a CLEC sends an LSR request to Qwest they are asking
'what' would happen to this specific LSR if the telephone numbers, circuits, and facilities in
SATE existed in Qwest's Production Network and this specific LSR was sent to Production." *Id.*

[66] KPMG Exception 3077, KPMG's Third Response at 15, 20. The CLEC must specify in the
Remarks field of the LSR whether it wishes to receive responses in intervals like those in actual
production or within shorter time frames. *Id.* at 15.

[67] KPMG Exception 3077, Disposition Report at 3. *See also id.* at 2 (noting that in response to
the "real world scenario testing" issue, Qwest "stated that VICKI is purposefully dissimilar from

99.   With respect to the issue of flow-through, KPMG found that despite Qwest's promise to implement flow-through enhancements in the SATE, KPMG was unable to test such capability because it had not yet been fully implemented. Qwest claimed that it had implemented such capabilities for UNE-P and resale orders in its Western region (Oregon and Washington) on February 22, but was not scheduled to implement those capabilities in its other two regions until May 20 – precluding KPMG from testing them. KPMG therefore concluded that "until the proposed enhancements are fully implemented, KPMG Consulting does not believe that the current test environment provides a CLEC with an accurate representation of the production environment's flow-through capabilities."[68]

100.   Finally, KPMG found that the data in the responses sent to users of the SATE were inconsistent and might not mirror the data that would be found in responses sent in the production environment. Thus, identical LSRs or queries might receive different response messages depending on whether they were sent in the SATE or in the production environment.[69] Although Qwest's documentation specifically states that data in post-order responses in its SATE may be inconsistent with the data in production, KPMG concluded that "documentation of known differences does not substitute for a test environment that mirror the transactional behavior of the

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the production environment and is designed to allow CLECs to certify IMA EDI capabilities by making paths available to trigger . . . all of the necessary post order responses").

[68] KPMG Exception 3077, Disposition Report at 3.

[69] KPMG stated that an example of such differences, described in Qwest's own documentation, is a query for a telephone number. Although in actual production the query might result in an error message that says "Host Not Found," in SATE the CLEC might receive the message, "Bad NPA/NXX." KPMG Exception 3077 at 3.

production environment." KPMG Exception 3077, Disposition Report at 4. KPMG further

found that it could not determine whether this problem had been affected by the implementation

of VICKI or any flow-through enhancements by Qwest, since its observations of commercial

activity had occurred prior to such implementation -- and, in any event, had been limited. *Id.*

101.   Because the deficiencies in Qwest's SATE that it found in Exceptions 3077

and 3095 had not fully been resolved, KPMG found in its Final Report that Qwest had *not*

satisfied Evaluation Criterion 24.6-1-8 -- which involved the issue of whether "A functional test

environment is made available to customers for all supported interfaces." KPMG Final Report at

591-592. Although Qwest now suggests that the concerns expressed by KPMG either have been

largely resolved or are irrelevant, its attempts to explain away KPMG's conclusions do not

withstand scrutiny. *See* Application at 148-150; OSS Decl., ¶¶ 741-759.

102.   Qwest acknowledges that, as KPMG found in Exception 3095, the SATE

does not support all resale product and UNE offerings available in production. Nonetheless,

Qwest asserts that CLECs seeking to test products or offerings currently unavailable in the SATE

may either: (1) submit a change request for additional products to be included in the SATE; or (2)

use the Interoperability Environment to test products not currently available in the SATE. OSS

Decl., ¶¶ 756, 759. These "alternatives," however, are patently inadequate. As KPMG found,

the use of change requests to add products to the SATE is "onerous and untimely for a CLEC

expecting to test unsupported functionality during its EDI implementation."[70] For example, as

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[70] KPMG Exception 3095, Disposition Report at 2. Contrary to Qwest's suggestion, the CLECs
did not "agree" that the availability of the change request process is a sufficient substitute for
Qwest's failure to include all products and features in SATE. *See* OSS Decl., ¶ 756. The CLECs

described above, Qwest still has not implemented the two change requests filed by AT&T to add

products to SATE, even though these requests were filed seven months ago. The use of the

Interoperability Environment is an equally unrealistic alternative, given its numerous limitations as

a test environment (¶¶ 82-87, *supra.*)

103.   With respect to KPMG's finding that VICKI does not support "real world

scenario testing," Qwest asserts that (1)"real world scenario testing" is limited to testing "what

flow-through message a CLEC would receive from the legacy system Service Order Processors

(SOPs) in production"; and (2) Qwest therefore has addressed KPMG's concerns by the

implementation of flow-through capability in SATE in May 2002. OSS Decl., ¶¶ 746-748.

Qwest is wrong. In the first place, "real-world scenario testing," as defined by Qwest, is not

confined to flow-through capability. Qwest acknowledges that such testing "refer[s] to a CLEC's

ability to test what happens to an LSR if it were submitted in production." *Id.,* ¶ 746.

Furthermore, as KPMG noted in Exception 3077, Qwest's own documentation defines "real

world scenario testing" as "what happens to an LSR if the telephone numbers, circuits, and

facilities in SATE existed in Qwest's Production Network and a specific LSR was sent to

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accepted the premise that SATE change requests needed to be prioritized only because Qwest
made it clear that it was unwilling to take the CLECs' preferred course of including all products
and features in SATE at this time. Qwest's assertion that CLECs have expressed "little or no
interest" in 14 change requests that it had submitted for the addition of new products to SATE
(OSS Decl., ¶¶ 756-758) is self-serving and misleading. CLECs expressed "little or no interest" in
giving these CRs a high priority for purposes of future releases because the CRs would consume
release enhancement capacity otherwise available for changes to the OSS that CLECs need.
CLECs have objected, as a matter of policy, to Qwest's insistence on using change requests as the
means of adding features to SATE, because there should be no need for them to choose between
adding features to SATE and making changes to the OSS. SATE should always be designed to
reflect the production environment without the need for the submission of change requests.

DECLARATION OF JOHN F. FINNEGAN,
TIMOTHY M. CONNOLLY, AND MITCHELL H. MENEZES   **REDACTED**
FCC WC DOCKET NO. 02-189   **FOR PUBLIC INSPECTION**

Production." *Id.*, ¶ 746 n.1110 & Exh. LN-OSS-77 at 3-4; KPMG Exception 3077, Third

Response at 3. These definitions encompass not merely the "flow-through messages" that a

CLEC would receive, but also rejection messages, messages that CLECs would receive even if

the LSR did not flow through, and responses to pre-ordering inquiries.[71]

       104.   Furthermore, Qwest mischaracterizes the concern that KPMG expressed

with respect to real-world scenario testing. As previously stated, KPMG found that, because of

the requirement that CLECs select predetermined paths in order to receive automated responses,

the test environment was "inherently dissimilar to the way in which orders are processed in the

production environment."[72] That requirement still exists in the SATE today. Unlike VICKI, the

OSS in actual production do not require (much less allow) a CLEC to choose between "responses

with production-like intervals" or responses with "shorter time delays specifically designed for

interface testing." *See* KPMG Exception 3077, Third Response at 15; OSS Decl., ¶ 747 n.1113

(CLECs "point a test transaction to a particular path designed to generate a particular response").

In actual production, the times of responses are controlled entirely by Qwest – and its OSS.

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[71] Qwest's definition in its own documentation refutes its allegation that "Qwest intended, and the CLECs understood, that 'real world scenario testing' would be implemented via the introduction of flow-through capability into SATE." OSS Decl., ¶ 746 n.1109. The minutes of the users' group meeting that Qwest cites in support of its allegation show that – at best – flow-through capability in SATE was discussed by Qwest and the CLECs in the overall discussion of "real world scenario testing." They certainly provide no indication that the CLECs considered such capability to be the only aspect of real-world scenario testing.

[72] KPMG Exception 3077, Third Response at 17.

KPMG clearly considered this difference to be a different problem from the lack of flow-through capability in the SATE, because it consistently listed the two problems as separate issues.[73]

106.   Even if flow-through capability was the sole issue encompassed by KPMG's finding that VICKI does not support "real world scenario testing" (and it was not), the purported implementation of flow-through capability in Qwest's SATE has not fully resolved the issue – or KPMG's expressly-stated concern about the lack of such functionality. Implementation of such functionality was completed in all three of Qwest's regions only on May 20, 2002. *Id.* ¶ 749. As stated above, that functionality was not tested by KPMG because it had been implemented in only one of the regions at the time of the test – and KPMG had closed the issue as "unresolved" at the request of Qwest. *Id.* Because such implementation is so recent, it is premature to conclude that the new SATE functionality supports flow-through orders to the same extent as in commercial production.

106.   Apparently recognizing that the effectiveness of the new flow-through functionality in the SATE has not been proven, Qwest asserts that the issue is not relevant because the Commission "requires neither flow-through capability or a test service order processor" in the test environment, citing the *Texas 271 Order. Id.*, ¶ 749 & n.1117; *see also* Application at 148-149. However, the *Texas 271 Order* did not unequivocally hold that such capabilities are not required in a test environment. As Qwest admits, the *Order* simply held that

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[73] *See, e.g.*, KPMG Exception 3077, Deposition Report at 2; Exception 3077, KPMG's Third Response at 16-19. Qwest states that "To the extent VICKI is different from the production environment, this is an intended aspect of SATE's design." OSS Decl., ¶ 710. But that is precisely the point: VICKI creates changes in the functioning of the SATE that make it different from the production environment.

SWBT was not required to do so, based on the "totality of the evidence" – including evidence that CLECs were not harmed by (and actually benefited from) the manual nature of SWBT's test environment, and that "the vast majority of carriers are able to achieve production status and test new releases without substantial difficulty." *Texas 271 Order*, ¶ 138; OSS Decl., ¶ 749 n.1117.

107.   Qwest has submitted no such evidence here. For example, of the four CLECs that used the SATE for IMA Release testing, only two were able to use that environment without experiencing the same problems as those encountered in the Interoperability testing environment. To the best of AT&T's knowledge, one real-world CLEC used the SATE to test IMA Release 9.0 – and that CLEC was Allegiance, which has been identified by the Staff of the Arizona Corporation Commission as one of the CLECs that had secret agreements with Qwest.[74] There is also no evidence that SWBT's test environment, discussed in the *Texas 271 Order*, contained the other deficiencies in the SATE that preclude Qwest's SATE from mirroring the production environment, or suffered from the SATE's instability problems.

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[74] *See* Staff Report and Recommendation regarding Qwest's compliance with Section 252(3) of the Telecommunications Act of 1996, filed June 12, 2002 in ACC Docket No. RT-00000F-02-0271, Memorandum at 17. In an undated letter that Qwest includes with its application, Allegiance states that it has used Qwest's testing environment "on four different occasions in the past 15 months," and that SATE has been a "pleasure to work with." OSS Decl., Exh. LN-OSS-79. SATE, however, has not been available to CLECs for 15 months; it was first made available to CLECs in August 2001. *See id.*, ¶ 702. In any event, the standard for evaluating a test environment under Section 271 is not whether, as Allegiance states, SATE is "a pleasure to work with" in comparison to "what initially seemed like a huge headache." *Id.*, Exh. LN-OSS-79. The letter from Nightfire cited by Qwest also fails to show that SATE meets the requirements of Section 271, since Nightfire simply states that "when a product is supported in SATE as well as in production, SATE mirrors the production environment." *Id.*, ¶ 725 & n.1064 and Exh. LN-OSS-80. As described above, SATE cannot fully mirror the production environment because it does not support *all* of the products offered in that environment.

108.   With respect to KPMG's finding that the responses in the SATE are inconsistent, and may not mirror the data that would be found in production responses, Qwest asserts that it has described any such differences in the documentation that it provides to CLECs – and that, in any event, "the structure of the responses returned in SATE matches the structure of responses returned in production." OSS Decl., ¶¶ 752-755. Even if the differences are documented, however, the differences in responses leaves a CLEC unable to determine through the SATE whether the responses that it receives in testing will be those that it receives in production -- and whether an LSR based on data from responses received in the SATE will be successful in the production environment.[75] This is a significant problem for CLECs because, as Qwest has admitted in the *Qwest I* proceeding, a substantial percentage of error messages have not been coded into SATE.

109.   A table submitted by Qwest to the Department of Justice and to the Commission in connection with its *Qwest I* application shows that SATE includes only approximately 78 percent of all error messages actually experienced in production (or only 409 of 525 error messages). Furthermore, Qwest's table shows that SATE covers only 13.43 percent of the total legacy system error messages that would be encountered in production.[76] Thus, Qwest's

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[75] As KPMG stated in rejecting the same argument by Qwest, "documentation of known differences does not substitute for a test environment that mirrors the transactional behavior of the production environment." KPMG Exception 3077, Disposition Report at 3. The documentation would only enable CLEC to conduct a cumbersome, time-consuming manual comparison of each response received in SATE to the Qwest documentation to determine whether the SATE response matches the response in production. Clearly, it is unreasonable to require the CLECs to expend the substantial time and resources that would be necessary to perform such a task.

[76] *See* Attachment 22 hereto, *ex parte* letter from Hance Haney (Qwest) to Magalie Roman Salas in WC Docket No. 02-148, dated July 15, 2002 (table). Attachment 23 hereto, which is based on

statement that "not every possible legacy error response is duplicated in SATE" is a gross understatement. *See* OSS Decl. ¶ 722.

110. The omission of so many errors, and error messages, from SATE is flatly inconsistent with Qwest's own description of the purpose of interface testing – "to ensure CLECs that their systems will be able to receive and display error messages and other responses, such as FOCs." *Id.*, ¶ 720. Because so many responses are *not* coded in SATE, CLECs have no assurance that the error messages that they receive in SATE will be the same as those received in production. In fact, the three examples that Qwest offers of differences in SATE responses and production responses confirm that the content of the responses can be, and are, dramatically different:

- When a CLEC reserves an appointment longer than 8 hours, the CLEC will receive a response of "you cannot reserve an appointment longer than 8 hours" in production, but a response of "no appointment available" in SATE.

- When a CLEC attempts to retrieve a customer service record using an incorrect circuit ID number, it will receive a response of "missing reference data in CRIS [because] circuit ID number not listed" in production, but a response of "no active account" in SATE.

- When a CLEC enters an incorrect zip code in a pre-order query, it will receive a response of "no [geographic area] match for that zip code" production, but a response of "address not found" in SATE.

Id., ¶ 724.

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the table included in Qwest's *ex parte* letter, shows how the above-described percentages were calculated. The 22 percent figure represents the difference between the number of production legacy system errors not included in SATE (134 minus 18), divided by the combined total of 525 errors in the Business Process Layer ("BPL") and the legacy systems (391 plus 134). The 13 SATE-coded legacy system errors constitute 13.43 percent of the 134 legacy system errors.

111. These examples show that, even if the "structure" of the responses is the same in both the SATE and the production environment, the *content* of the responses can be – and is – substantially different. Qwest seeks to rationalize the differences in content by asserting that for purposes of testing an interface, "the specificity of the error message received is not what the CLEC relies on for purposes of developing its EDI interface. Rather, it is whether the CLEC can receive and display the error message." *Id.* ¶ 724. As Qwest surely knows, however, that is not true.

112. The examples that Qwest gives of differences in error messages show that the content of the messages received in a test environment is extremely important to a CLEC. There is, for example, a significant difference between being advised that an appointment is totally unavailable, and being advised that an appointment cannot be reserved for more than 8 hours. Similarly, in the third example given by Qwest, a CLEC will typically react to a message of "address not found" by assuming that the address given by the customer was either incorrect or does not match the CSR. That is a far different reaction than would be the case if the CLEC received the (production) message that there is "no CALA match for that zip code."

113. Furthermore, in each of the examples given by Qwest, the SATE error message would also be returned for many other encountered error conditions because the SATE uses the same error message for several error conditions. Consequently, CLECs do not know which error condition has actually been encountered. For these reasons, unless the content of the SATE message is the same as that of the message it receives in production, the CLEC cannot know whether the transaction it receives in SATE will have the same experience in commercial production, how the CLEC should respond to Qwest's message, or which actual error condition

has occurred. Regardless of whether a human being or the CLEC's EDI software system actually

acts upon the content of an error message, the importance of the content of the message to a

CLEC – and the confusion that the CLEC will experience due to the differences in the content of

the messages – will be the same.

114.   Moreover, CLECs may desire to develop software of their own that

analyzes the content of error codes and prompts for responses (either by its electronic systems or

by CLEC representatives) to error messages in actual production. As a practical matter, however,

testing of such software is problematic if the responses received in SATE differ from those in

actual production. Similarly, because of the different content of SATE responses and production

responses, CLECs evaluating a new version of its interface in SATE have no way of knowing

whether they will receive the same response in production and whether they should revise their

systems, ask Qwest to revise its systems, or conclude that no changes are necessary. In short, the

specificity and content of the message received in SATE, and the extent to which that content

mirrors production, is critical to a CLEC's ability to compete.[77]

115.   Finally, Qwest's assertion that "No CLEC to date has asked Qwest to

include additional error messages in SATE" is disingenuous. OSS Decl., ¶ 723. The lack of such

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[77] One of the reasons why a CLEC does not receive the same responses in the production
environment is Qwest's failure to populate the databases used in the SATE with the same data
that are kept in the databases used in the production environment. For example, Qwest populates
the SATE databases with only a portion of the information in its production databases regarding
customer service records, telephone numbers, and loop qualification. Thus, a CLEC conducting a
CSR query in the SATE may not receive the same response as it would in the commercial
environment, and a CLEC conducting a loop qualification query may not receive all of the
information regarding a particular loop (such as loop length) that it would receive in the
production environment.

requests is due to Qwest's insistence that any CLEC seeking the inclusion of additional error

codes in the SATE must file a data request for those codes. Because of Qwest's refusal to make

SATE mirror the production environment, and the fact that Qwest limits the resources available

for improvements to SATE, CLECs could achieve the coding of additional error messages in

SATE only by foregoing the implementation of the vast array of functionality, products, or

features that are not (but should be) currently included in SATE. In any event, during the Section

271 workshops conducted by the Arizona Corporation Commission AT&T asked Qwest to code

all production error messages in SATE as a matter of policy (rather than as a part of the change

management process), but Qwest would not agree to do so.[78]

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[78] Contrary to Qwest's suggestion, Qwest's performance under the current Performance Indicator Definition PO-19 provides no indication of whether SATE adequately mirrors the production environment. *See* Application at 147; OSS Decl., ¶ 729. Although Qwest states that PO-19 "evaluates Qwest's ability to provide accurate production-like tests to CLECs for testing both new releases and between releases in the SATE environment" (*id.*), Qwest admitted in OSS workshops in Arizona last April in calculating PO-19, that Qwest does not compare the results of tests run in SATE against results that were *actually* obtained in a production run of the same data. Instead, PO-19 compares SATE results with the results that *should* be generated from production processing. In response to AT&T's objections to this approach, the parties are currently negotiating a new PID that will provide information that compares the accuracy of test results against *actual* production. *See id.*, ¶ 730 (stating that Qwest has agreed "to modify the current PID to create a new PID submeasure (PO-19B) that would compare the execution of the same transactions in production and in SATE, in order to further measure the extent to which SATE mirrors production"). However, the new PID proposed by Qwest for PO-19 is unacceptable, because it would exclude transactions that fail because of differences between SATE and the production environment – including the absence of some aspect of the production environment from SATE due to a decision in the prioritization process used in connection with SATE-related change requests. Because SATE should mirror the production environment, there is no justification for using different processes for prioritization of change requests according to whether some aspect of the production environment should also be implemented in SATE. The two environments should be a mirror image of each other.

Finally, Qwest's description of its "current formulation" of PO-19B is inaccurate. Qwest's formulation would not include "95 percent of the transactions that have run in production," as it

c.   Hewlett-Packard's Evaluation of SATE in Arizona

116.   Qwest cites the "comprehensive evaluation" of its SATE by Hewlett-Packard ("HP") in Arizona as "additional support" for its contention that the SATE meets the requirements of Section 271. Application at 151; OSS Decl., ¶¶ 739-740. HP's testing, however, provides no basis for concluding that the SATE is adequate.

117.   HP's testing was incomplete in numerous respects. First, HP did not conduct "production mirror testing" to determine whether IMA Release 9.0 mirrored the production environment, even though HP's first evaluation of the SATE recommended that IMA SATE Release 9.0 be tested to "ensure that the SATE is adequate for full release testing."[79] The failure of HP to conduct production mirror testing was a critical omission, since HP's first evaluation had found "noteworthy discrepancies related to business rules consistency between the SATE and production systems."[80]

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alleges (*id.*), but 95 percent of the most frequently experienced combinations of order activity and product types and 95 percent of the most frequently experienced pre-order activity types. Although Qwest has not revealed the volume of transactions that it will process for purposes of PO-19B, it is likely that they will be small, since it has already indicated that it will include only one pre-order query for each type included in the 95 percent sample.

[79] *See* OSS Decl., ¶ 740 & Exh. LN-OSS-83 at 10. As part of the third-party testing of Qwest's OSS in Arizona, HP conducted its first evaluation of SATE in 2001, and issued a report on that evaluation (including its recommendation regarding SATE Release 9.0) in December 2001. *Id.*, Exh. LN-OSS-83. Following the conclusion of the January 28, 2002 workshop before the Arizona Corporation Commission regarding HP's evaluation report, the Staff of the ACC directed HP to conduct an evaluation of SATE Release 9.0. *Id.*, Exh. LN-OSS-87 at 5.

[80] OSS Decl., Exh. OSS-83 at 7-9 (§§ 2.1, 2.1.5). Although HP included production mirror testing in the scope of its initial test plan for SATE Release 9.0, HP subsequently decided not to conduct such testing, based on Qwest's interpretation of PO-19 and HP's interpretation of the CLECs' positions during previous discussions of PO-19 at the Regional Oversight Committee and

118.   HP also failed to conduct comprehensive testing of VICKI – which Qwest implemented after HP's first evaluation. Although HP used VICKI to "accelerate the test" by allowing HP to receive automated responses for certain orders, HP did not "use the full functionality offered" by VICKI. OSS Decl., Exh. LN-OSS-87 at 31-32 (§ 3.7.3). Thus, HP did not determine whether Qwest's SATE consistently and reliably returned automated responses.

119.   Similarly, although Qwest introduced a limited flow-through testing capability coincident with the release of SATE Release 9.0, that capability was not tested by HP in Arizona. As KPMG noted in its separate testing of the SATE, the lack of flow-through functionality precludes a CLEC from determining how test transactions will perform in actual production.

120.   Even leaving aside the incomplete nature of the HP evaluation, the conclusions reached by HP in its two evaluations do not show that the SATE mirrors the production environment. For example, after its first evaluation (which involved SATE Releases 7.0 and 8.0), HP stated that it was unable to determine whether the "SATE returns consistent responses," given the large number of responses returned in the SATE that were not consistent with Qwest's documentation:

> HP has determined that the valuation of this criterion remains Inconclusive. HP identified that most of the error message variances found relate to the incidence of legacy system errors that are not included on the production error list, and messages that present LSR FORM and SECTION Headers. Additionally, HP found occurrences of error messages being generated in SATE that

the Technical Advisory Group. *Id.*, Exh. OSS-87 at 12, 21-22 (§§ 2.0, 3.6.2). HP, however, made this decision without inviting or receiving any input from the CLECs on the issue.

> were not equivalent to what was published on the error lists. HP
> ran 30 scenarios, of which 11 scenarios successfully matched and
> 19 scenarios did not match.

OSS Decl., Exh. LN-OSS-83 at 38-39 (§ 6.6.3(6)). HP's second evaluation (of Release 9.0) did

not examine these issues. *Id.*, Exh. LN-OSS-87 at 35-36 (§ 3.8).

121.   In any event, HP will soon begin another evaluation of whether the SATE

reflects the production environment. The Staff of the Arizona Corporation Commission recently

requested HP to validate Qwest's reported data for PID PO-19 by reviewing how the SATE

functions as compared to the actual production environment.[81] Thus, any previous finding by HP

as to the SATE's ability to mirror the production environment will be superseded by its new

review.

2.   **Qwest Fails To Provide an Adequate Test Environment For CLECs**
     Using Its Application-to-Application Maintenance and Repair
     Interface.

122.   Qwest also fails to provide an adequate testing environment for CLECs

that are building or modifying interfaces to its Mediated Access Electronic Bonding for Trouble

Administration ("MEDIACC EB-TA"). EB-TA is the application-to-application maintenance and

repair interface that Qwest offers to CLECs as an alternative to Customer Electronic Maintenance

and Repair ("CEMR"), which is Qwest's human-to-computer interface for maintenance and

repair.

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[81] *See* OSS Decl., ¶ 731 (acknowledging that while deliberations are pending before the Arizona commission regarding the exact formulation of the new PO-19B measure, Qwest will run "the same transactions in both SATE and in the production environment to compare the responses received, based on the 95 percent formulation discussed above," and that "HP will review the results of those tests and report back to the ACC").

123.   As KPMG found in Exception 3109 of its test, the EB-TA testing

environment is deficient because it is not separate from the production environment. Test

scenarios in that environment are processed by Qwest's LMOS production mainframe. As a

result, test transactions could invade the production processes and result in the dispatches of

technicians to work on trouble tickets that are not for end-users experiencing troubles on their

lines. KPMG also found that Qwest's documentation did not sufficiently describe "how the

LMOS production system was used during end-to-end testing or what the known limitations are

of using a test environment with a production environment."[82]

124.   In response to Exception 3109, Qwest simply stated that it planned no

immediate changes to the EB-TA testing environment, and requested that the exception be closed

as unresolved. Thus, in its Final Report, KPMG found that Qwest had "not satisfied" its

evaluation criterion of whether Qwest made available test environments for maintenance and

repair that "are available and segregated from Qwest production and development

environments."[83]

125.   Given Qwest's failure to keep the EB-TA test environment separate from

production, it clearly fails to satisfy the requirements of Section 271. Qwest, in its Application,

admits that the EB-TA testing environment uses the LMOS production applications. OSS Decl.,

¶ 768. Qwest argues, however, that the Commission (1) has not required BOCs to provide

application-to-application interfaces for maintenance and repair, and (2) has required a stable test

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[82] KPMG Exception 3109, Disposition Report dated March 19, 2002, at 3.

[83] KPMG Final Report at 609-610 (Evaluation Criterion 24.6-2-9).

environment that mirrors, but is separate from, the production environment only where pre-ordering and ordering functions are involved. Application at 148 n.63; OSS Decl., ¶¶ 761-762.

Qwest, however, misses the point. The Commission has never limited its requirements for a test environment to pre-ordering and ordering functions. Moreover, the need of CLECs for a test environment separate from the production requirement is the same in the context of maintenances and repair functions as in the context of pre-ordering and billing: to ensure "that competing carriers are capable of interacting smoothly and effectively with a BOC's OSS," without disrupting (or being affected by) the production environment.[84]

III.   QWEST FAILS TO PROVIDE NONDISCRIMINATORY ACCESS TO OSS FUNCTIONS.

126.   Even leaving aside the inadequacy of its change management process, including its test environment, Qwest does not meet its OSS obligations. Qwest does not provide systems that give CLECs the same degree of access to pre-ordering, ordering, provisioning, maintenance and repair, and billing functions that Qwest enjoys in its own retail operations.

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[84] *See Georgia/Louisiana 271 Order,* ¶ 187. KPMG similarly found that "segregation of testing environments is an important aspect of interface development" in the context of maintenance and repair, because it eliminates the risk of negatively impacting the production environment, allows a CLEC to test its interface without relying on live customer account information, and "provides a structured learning environment where both CLECs and Qwest can understand exactly how transactions process under a defined set of conditions." Exception 3109, KPMG's First Response dated February 21, 2002, at 4-5. Although Qwest asserts that "five CLECs have tested successfully using EB-TA," KPMG's own investigation of the commercial experience of CLECs using the EB-TA testing environment found that CLECs regarded it as cumbersome (due to manual intervention by the Qwest Tester) and that certain CLEC trouble reports had passed by the tester through to the Qwest production processes. *See* OSS Decl., ¶ 768; KPMG Exception 3109, Disposition Report at 2-3.

A.   Pre-Ordering

127.   As the Commission has stated, "Given that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that inferior access to the incumbent's OSS does not render the carrier a less efficient or responsive service provider than the incumbent." *New York 271 Order*, ¶ 129. Due to flaws in Qwest's systems, however, CLECs using the functionality provided by Qwest for retrieving service address information experience order rejections that do not occur in Qwest's own retail operations.

128.   Qwest denies CLECs nondiscriminatory access to pre-ordering functions in four respects. First, Qwest has not provided CLECs with the ability to integrate pre-ordering and ordering functions, or to integrate Qwest's EDI pre-ordering interface with their own back-end systems. Second, CLECs do not have parity of access to loop qualification information. Third, Qwest refuses to give CLECs the same ability to perform pre-ordering mechanized loop testing ("MLT") that Qwest itself enjoys. Finally, Qwest denies parity of access to due dates.

> **1.   Qwest Has Not Shown That It Has Provided CLECs With the Ability To Integrate EDI Pre-Ordering and Ordering Functionalities, or To Integrate Its EDI Pre-Ordering Interface With the CLEC's Own Systems, Fully and Successfully.**

129.   The Commission has stated that "in order to demonstrate compliance with checklist item 2, the BOC must enable competing carriers to transfer information (such as a customer's address or existing features) electronically into the carrier's own back-office systems and back into the ordering interface."[85] Qwest, however, does not do so.

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[85] *Texas 271 Order*, ¶ 152. *See also Georgia/Louisiana 271 Order* ¶ 119.